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No. .....

In The

Supreme Court of The United States

..... Term, 1983

EMMA F. LOPEZ,

Petitioner,

vs.

THE UNITED STATES of AMERICA

Respondent.

Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

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QUESTION PRESENTED

Whether the false registration of a State birth certificate constitutes an offense against the United States under 18 U.S.C. 1425.

No. .....

In The

Supreme Court of The United States

..... Term, 1983

EMMA F. LOPEZ,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

Respondent.

Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

Petitioner, Emma F. Lopez, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, infra.) is not yet reported. The opinion of the District Court (App. B, infra.) is reported at 484 F. Supp. 212.

JURISDICTION

The judgment of the court of appeals was entered on May 19, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 18 U.S.C. 1425 provides in pertinent part:

   18 U.S.C. 1425 (Procurement of Citizenship or Naturalization Unlawfully)

   (a) Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary, or other evidence of naturalization or of citizenship; or

   (b) Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of naturalization or citizenship, documentary or otherwise, or duplicates or copies of any kind of the foregoing

   Shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948.

2. The Nationality Act of 1940 (Act of October 14, 1940, 54 Stat. 1163) is extremely lengthy and is submitted in the Annex to Petitioner's Petition for a Writ of Certiorari, Section A.

3. The Naturalization Act of 1906 (Act of June 29, 1906,

34 Stat. 596) is extremely lengthy and is submitted in the Annex, Section B.

4. Vernon's Ann. Tex. Const., art. 16, Sec. 32 reads as follows:

"Sec. 32. The legislature may provide by law for the establishment of a Board of Health and Vital Statistics, under such rules and regulations as it may deem proper."

5. Vernon's Ann. Tex. St. Art. 4477 (The Sanitary Code of Texas), Rules 34 through 57 (Vital Statistics) is extremely lengthy and is submitted in the Annex, Section C.

6. Vernon's Ann. Tex. St. art 4477(b)(1979) is lengthy and is submitted in the Annex, Section D.

STATEMENT

The opinion of the court of appeals fully sets forth the facts in this case. Petitioner was a midwife in Laredo, Texas. As part of her occupation, she registered births with the city and state officials. In March, 1979, Leonarda Virgil sought Petitioner's help in obtaining a delayed Texas birth certificate for her son who had actually been born in Mexico. Petitioner executed certain documents with the city secretary's office, with copies to the Texas Bureau of Vital Statistics, falsely stating that the child had been born in Texas. Virgil attempted to use the delayed birth certificate when she tried to enter the United States from Mexico with the child.

Petitioner was indicted on two counts: a conspiracy and a violation of 18 U.S.C. 1425. Pursuant to a plea bargain, the conspiracy court was dismissed and Lopez pled guilty

to Count 2 (App. C, infra.) The district court sentenced Lopez to four (4) years in prison, suspended the sentence, and placed her on five (5) years probation.

Lopez filed a petition for writ of habeus corpus under 28 U.S.C. 2255 with the district court which was denied. After her appeal was perfected and the parties had filed their briefs, the court of appeals directed counsel to file supplemental briefs addressing the impact of *Williams v. United States*, ____ U.S. ____, 102 S. Ct. 3088, 73 L.Ed.2d 767 (1982), and *United States v. Smith*, 686 F2d 234 (5th Cir. 1980). The parties then filed supplemental briefs together with annexes containing the relevant statutes and legislative histories.

On May 19, 1983, the court of appeals affirmed the judgment of the district court.

REASONS FOR GRANTING THE WRIT

1. *Introductory Argument*

The court of appeals has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in a way in conflict with applicable decisions of this Court. The Court of Appeals stated: "The issue in this case is thus whether a person who has aided an alien in fraudulently obtaining a state birth certificate may be convicted of violating the federal immigration laws, specifically 18 U.S.C. Section 1425. This is apparently a case of first impression in any circuit on this specific question."

In *William v. United States*, ____ U.S. ____, 102 S.Ct. 3088, 73 L.Ed.2d 767 (1982), this Court reiterated the long standing rule that a criminal statute should be strictly

construed. The Court set forth specific guidelines to be followed in determining whether a particular conduct is encompassed by a federal criminal statute:

(1) whether the plain language of the statute includes such conduct;

(2) whether the legislative history fails to evidence a congressional awareness of the statute's claimed scope;

(3) whether its application to the conduct in question would render a wide range of conduct violative of federal law; and

(4) whether the subject matter has been traditionally regulated by state law.

The statute under which Petitioner was convicted, 18 U.S.C. 1425, derives from two major revisions of the immigration laws: the Naturalization Act of 1906 (Act of June 29, 1906, 34 Stat. 596) (Annex, Sec. A) and the Nationality Act of 1940 (Act of October 14, 1940, 54 Stat. 1163) (Annex, Sec. B).

2. *The plain language of 18 U.S.C. 1425, as well as its predecessor statutes, fails to include State birth certificates.*

It is undisputed that birth certificates are not listed in 18 U.S.C. 1425 and its predecessor statutes. Therefore, the statute fails to meet the first test enumerated in *Williams*. In rejecting this contention, the court of appeals stated that "we do not read the statute so narrowly, especially in view of the two methods of obtaining citizenship." Since a person can become a citizen at birth, most notably by being born in the United States, the Court reasoned, "(o)ne need not strain the ordinary and logical meaning

of 'other evidence of citizenship' to find that birth certificates are covered by the language."

However, it was exactly that type of test which was expressly rejected by this Court in *Williams*:

> "While (the government's) broader reading of Section 1014 is plausible, we are not persuaded that it is the preferable or intended one. It 'slights the wording of the statute.' . . . And, when interpreting a criminal statute that does not explicitly reach the conduct in question, we are reluctant to base an expansive reading on inferences drawn from subjective and variable understandings.* (*Footnote: That is particularly true where, as here, it is not immediately clear what 'common understanding' would recognize as the implied representation of the act of depositing one's own check . . . We therefore find 'common understanding' a particularly fragile foundation upon which to base an interpretation of Sec. 1014.)"[1]

3. *The legislative history of 18 U.S.C. 1425, as well as its predecessor statutes, fails to evidence a congressional awareness of the statute's claimed scope.*

Nowhere in the legislative history of the 1906 Act is mentioned any problem with respect to false or fraudulent birth certificates. The sole purpose of the Act was to prevent the frauds which were being committed in naturali-

[1] Equally notable in regard to citizenship at birth is being a natural born child of an American citizen. The voluntary legitimation of a child under Texas law is accomplished by the father executing an affidavit as to paternity. Vernon's Ann. Tex. Stat., Family Code, Sec. 13.22. If an American father executed such a statement of paternity in a Texas legitimation proceeding, falsely swearing that a person born in Mexico was his son, it would seem incredulous that the affiant could be convicted under 18 U.S.C. 1425. Yet, if it is logical to include a State birth certificate within the ambit of the statute, based on birth as a method of citizenship, it is equally logical to include the statement of paternity.

zation proceedings. H. Rep. No. 4373, 59th Cong., 1st Session (1906). Senator Scott addressed the problem of "fraudulent certificates of naturalization" and suggested specific safeguards and remedies to prevent fraud in connection with naturalization proceedings. Cong. Rec. Fifth-Ninth Cong., Sess. 1, pp. 7728-7230 (1906). Representative Bonynge stated that the "evils and the abuses, the crimes and the frauds that have been committed against the naturalization laws of the country constitute the strongest argument that could possibly be advanced for a revision of the laws." Cong. Rec., Fifth-Ninth Cong., Sess. 1, p. 3640 (1906). Representative Hays pointed to the thousands of fraudulent naturalization proceedings. Cong. Rec., Fifth-Ninth Cong., Sess. 1, p. 7043 (1906). No one ever mentioned that false birth certificates were a problem which needed to be addressed or that birth certificates were even being used in naturalization or citizenship proceedings. Also, see *United States v. Adielizzio*, 77 F.2d 841 (2d Cir. 1935).

The Court of Appeals conceded that "the 1906 Act dealt exclusively with naturalization" but then pointed to a statement by Joel Marks, Assistant United States Attorney of New York, to support its holding that Congress intended to encompass birth certificates within the ambit of the 1906 statute. A close examination of that portion of the debates shows that the concern was not with false birth certificates but rather with false representations made to immigration officials. 40 Cong. Rec. H7037 (daily ed. May 17, 1906).

The only purpose of the 1940 Act was to "revise and codify the nationality laws of the United States, . . ." 86

Cong. Rec. 11947 (1970) (statement of Rep. Rees). The legislative history fails to disclose any congressional concern with false or fraudulent birth certificates.

The court of appeals cited *United States v. Henry*, 604 F2d 908 (5th Cir. 1979) and *United States v. Rodriguez-Serrate*, 534 F2d 7 (1st Cir. 1976) in support of its holding that the "documentary evidence of citizenship" described in the 1940 Act included State birth certificates. *Henry* is inapplicable because that case involved a violation of 18 U.S.C. 911 which states: "Whoever falsely represents himself to be a citizen of the United States shall be fined not more than $1,000 or imprisoned not more than three years, or both." It is conceded that the use of a State birth certificate, or any other document, *to support a false representation of citizenship* would constitute a violation of 18 U.S.C. 911.

It is true that *Rodriguez-Serrate* holds that a birth certificate constitutes "documentary evidence of citizenship." That case was decided before *Williams* and the First Circuit based its decision on the fact that "(t)here is ample evidence to indicate that birth certificates are routinely relied by Puerto Rican officials to determine alien or citizen status."[2] However, not only does that test not square with the test which this Court enunciated in *Williams*, it is fundamentally unfair to base an "ordinary and logical" meaning of a statute on the discretionary policy

[2] The court below also pointed out that "(t)he Immigration Office now requires state birth certificates in immigration proceedings wherein a person seeks to establish United States citizenship based on birth in the United States, . . ." The court did not disclose whether such policy was in effect at the time the statute in issue was passed. Presumably the policy can be changed at the discretion of the Immigration Office.

of immigration officials. See *United States v. Vargas*, 380 F.Supp. 116 2 (E. D. New York 1974).

4. ***The registration of birth certificates has traditionally been regulated by State law.***

The Uniform Vital Statistics Act in force in a number of States was in substance adopted in Texas. Vernon's Ann. Tex. Stat., Art. 4477 — Rules 34a through 54a (1911, but amended various times thereafter). The Texas law was enacted as part of the Sanitary Code of Texas pursuant to Article 16, Section 32 of the Texas Constitution.

Since 1911, Texas law has provided penal sanctions for the furnishing of false information pertaining to birth records. Vernon's Ann. Tex. Stat., Art. 4477b (1911); Vernon's Ann. Tex. Stat., Art. 4477c (1927), Vernon's Ann. Tex. Stat., Art. 4477c (1979) (Annex, Section D)

5. ***The application of the statute to the false registration of State birth certificates would render a wide range of conduct violative of federal law.***

It is evident that to encompass this activity within the ambit of the statute would involve a significant intrusion by the national government into an area which has traditionally been regulated by the States.

CONCLUSION

The Court of Appeals stated that "Lopez cannot seriously argue that she was not fully apprised that procuring a state birth certificate for a Mexican alien *to prove that she was an American citizen* was a federal crime." (Emphasis added). However, Lopez never made that claim. Lopez argues that she and other ordinary citizens were not apprised by either the plain language of the

statute or its legislative history that a false registration of a State birth certificate constituted a federal crime.

No citizen should be required to guess at the ordinary and logical meaning of a criminal statute. In describing the "rule of lenity", this Honorable Court has repeatedly held that no individual should be forced to speculate, at peril of indictment, whether his conduct is prohibited; and that to insure that a legislature speaks with special clarity when marking the boundaries of criminal conduct, courts must decline to impose punishment for actions that are not plainly and unmistakably prescribed. *Dunn v. United States*, 442 U.S. 100 (1979).

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that this Honorable Court grant her petition for a writ of certiorari, and that upon hearing, this Honorable Court reverse the judgments of the Court of Appeals and the District Court, grant Petitioner her writ of habeas corpus, vacate her conviction, release her from conditions of probation, and grant such further and other relief which this Honorable Court deems just and proper.

Respectfully submitted,

By .....

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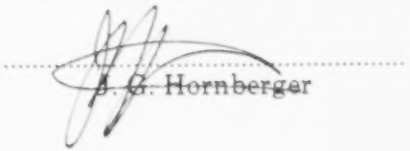
CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition for a Writ of Certiorari have been sent, by United States Postal Express, to the Solicitor General, Department of Justice, Washington, D.C. 20530 and that one copy has been sent by United States Postal Express, to John M. Potter, Esquire, Assistant United States Attorney, P. O. Box 61129, Houston, Texas 77208-1129.



J. G. Hornberger

Appendix A

UNITED STATES of America,
Plaintiff-Appellee,

v.

Emma F. LOPEZ, Defendant-Appellant.

No. 82-2245.

United States Court of Appeals,
Fifth Circuit.

May 19, 1983.

Appeal from the Uited States District Court for the Southern District of Texas.

Before POLITZ and JOLLY, Circuit Judges, and HUNTER* , District Judge.

E. GRADY JOLLY, Circuit Judge:

Appeallant, Emma F. Lopez, pleaded guilty in February 1980 to a one-count violation of 18 U.S.C. § 1425 which proscribes the knowing procurement of any certificate or other evidence of citizenship for any person not entitled thereto. She was given a suspended sentence and five years' supervised probation. After her probation was revoked in February 1982, she filed a petition for habeas corpus under 28 U.S.C. § 2255 which the district court denied. Lopez has filed a timely appeal. We affirm.

I.

Emma Lopez was a midwife in Laredo, Texas, for thirty-four years. As part of this occupation, she registered births with the city and state officials. In March 1979, Leonarda Vigil, for whom Lopez had previously delivered two other babies, approached Lopez and told her that although she had anticipated that her son, Fran-

cisco, would be born in the United States, he had, in fact, been born in Mexico. Vigil sought Lopez's help in obtaining a delayed Texas birth certificate for her child which Lopez agreed to provide in return for $200.

The $200 was paid over a five-month period, and when the final payment was made, Lopez executed certain documents with the city secretary's office, with copies to the Texas Bureau of Vital Statistics, stating that she had been in attendance as midwife at the birth of an infant in Laredo, Texas. Based on this information, the Texas Bureau of Vital Statistics issued a delayed birth certificate which Vigil used when entering the United States from Mexico with her infant child. The child looked older than the date on the delayed birth certificate, and thus aroused the suspicion of the immigration officer. Upon questioning, Vigil told the officer the whole story, and subsequently called Lopez and asked her what she should do. Lopez told Vigil to stick to her original story that the child had, in fact, been born in Laredo. This call was recorded.[1]

On January 18, 1980, Lopez was indicted on two counts, both a conspiracy and an attempt to procure evidence of citizenship in violation of 18 U.S.C. § 1425. On February 11, 1980, Lopez filed a Motion to Dismiss the indictment in which she alleged that the main purpose of a Texas birth certificate did not relate to naturalization or citizenship proceedings, and therefore 18 U.S.C. § 1425 could not support a conviction for procuring a falsified

[1] These facts were presented by the U.S. Attorney during the defendant's *Boykin* hearing. Both Lopez and her attorney stated that this version of the facts was correct.
We would further note, though not relevant to the issue before us, that the district judge conducted a very thorough *Boykin* hearing.

Texas birth certificate. She thus claimed that the indictment failed to charge a criminal offense. This motion was denied, and on February 20, 1980, Lopez pleaded guilty to the second count of the indictment in return for the government's withdrawal of the first count and its recommendation to the trial judge that she not be incarcerated.

On February 25, 1980, the trial judge held a sentencing hearing at which time he reviewed the report of the probation officers. He noted that Lopez had been under investigation for at least ten years for manipulating birth certificates and that she had previously received a misdemeanor conviction for a similar offense. The judge noted her age, sixty years old, and stated that he did not wish to deprive her of her livelihood, but that he also did not want any more illegal birth certificates. He asked the defendant to work with her attorneys and the probation officers to find a method to serve both ends. Noting that he would later review any proposed plan for modification of the probation, he sentenced Lopez to four years in prison, suspended that sentence, and placed her on five years probation. Two special conditions were attached to her probation: one was that she not practice midwifery in any form, subject to any reasonable plan that she might later submit which would allow her to deliver babies in Laredo but would preclude any further illegal activities, and the second was that the fine be paid as specified.

On May 5, 1080, Lopez filed a Notice of Appeal with this court which she later dismissed after the trial judge granted her motion to modify the probation conditions. This modification allowed her to continue her midwife practice on the condition that each birth be accompanied

by affidavits by Lopez, the mother of the baby, and by a specified disinterested third party, and that these affidavits be delivered to the probation officer within forty-eight hours of the birth.

On January 20, 1980, the judge revoked her probation after finding that she had signed five delayed birth certificates, verifying the earlier birth of a child without meeting the conditions specified in her modified probation. She was sentenced to four years imprisonment, only six months of which she would have to serve in a federal correctional institution, and five years supervised probation to run from the date of her initial sentencing, April 25, 1980.

Lopez filed a writ of habeas corpus directly with this court, pleading that she had not filed with the district court because the district court had previously denied her relief on the same grounds, once when it denied her Motion to Dismiss the indictment, and again during her probation revocation proceedings. On May 26, 1982, this court dismissed the petition, directing Lopez to address her contention to the sentencing court. Lopez subsequently filed her writ of habeas corpus under 28 U.S.C. § 2255 with the district court which denied her petition. She has filed a timely appeal.

II.

On appeal, Lopez contends that her conviction is void because the false registration of births within the State of Texas does not constitute an offense against the United States.[2]

[2] Lopez's first issue is stated as whether probation is a sufficient restraint on liberty to support a habeas corpus action. That question is well settled in her favor. *See, e.g., United States v. Condit*, 621 F.2d 1096, 1098 (10th Cir. 1980); *Coronado v. United States Board of Parole*, 540 F.2d 216, 217 (5th Cir. 1976).

A.

The statute under which Lopez pleaded guilty reads in pertinent part:

> 18 U.S.C. § 1425 (Procurement of Citizenship or Naturalization Unlawfully)
>
> (a) Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship; or
>
> (b) Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of naturalization or citizenship, documentary or otherwise, or duplicates or copies of any of the foreging —
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948.

[1, 2] Lopez argues that 18 U.S.C. § 1425 cannot be used to support a conviction for procuring documents unrelated to a naturalization proceeding. Since the births were falsely registered without regard to any citizenship or naturalization proceeding, Lopez contends that the acts fail to fall within the purview of the statute and, therefore, the indictment failed to charge an offense against the United States.[3]

[3] We first note that Lopez pleaded guilty to one count of the indictment. Generally, a guilty plea waives all nonjurisdictional defects in the proceeding against the defendant because the plea admits all elements of the formal charge. A defendant thus has no right to relief on appeal from a plea of guilty unless he or she can show a jurisdictional defect. *See Basrrientos v. United States*, 668 F.2d 838, 842 (5th Cir. 1982); *United States v. Jackson*, 659 F.2d 73, 74 (4th Cir. 1981). The failure of an indictment to allege an offense is a jurisdictional defect and is not waived by a guilty plea. *United States v. Meacham*, 626 F.2d 503, 509-10 (5th Cir. 1980).

The issue in this case is thus whether a person who had aided an alien in fraudulently obtaining a state birth certificate may be convicted of violating the federal immigration laws, specifically 18 U.S.C. §1425. This is apparently a case of first impression in any circuit on this specific question. Since 18 U.S.C. § 1425 is a criminal statute, is must be strictly construed. *United States v. Smith*, 686 F.2d 234, 239 (5th Cir. 1982) (citations omitted).

[3] To interpret § 1425 strictly and correctly, we must look first to the language of the statute. Determining whether fraudulent procurement of a state birth certificate for an alien falls with the ambit of knowingly procuring any certificate or other evidence of naturalization or citizenship for any person not entitled thereto requires an examination and interpretation of § 1425's terms in thier usual or common sense. *Williams v. United States*, ____ U.S. ____, 102 S.Ct. 3088, 3092-93, 73 L.Ed.2d 767 (1982); *United States v. Smith*, 686 F.2d at 239.

The statute in question refers to "any certificate or evidence of citizenship." This and other circuits have recognized that a birth certificate may be used as "evidence of citizenship." *See United States v. Henry*, 604 F.2d 908, 916 (5th Cir. 1979); *United States v. Ghaloub*, 385 F.2d 567, 570 (2d Cir. 1966); *Casares-Moreno v. United States*, 226 F.2d 873, 874 (9th Cir. 1955).

Moreover, the Immigration and Naturalization Service specifically recognizes birth certificates as evidence of citizenship in certain immigration proceedings when United States citizenship is based on birth in the United States. 8 C.F.R. § 204.2 (1982).

Furthermore, the First Circuit has interpreted the

phrase "or other documentary evidence of naturalization or of citizenship" as covering birth certificates. *United States v. Rodriguez-Serrate*, 534 F.2d 7, 11 (1st Cir. 1976). The statute at issue in *Rodriguez-Serrate*, 18 U.S.C. § 1015(c), proscribes the use of certain documentary evidence of citizenship knowing it to be false. It provides in pertinent part:

> 18 U.S.C. † 1015. Naturalization, citizenship or alien registry.
>
> . . . .
>
> (c) Whoever uses or attempts to use any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship or *other documentary evidence of naturalization or of citizenship*, or any duplicate or copy thereof, knowing the same to have been procured by fraud or false evidence or without required appearance or hearing of the applicant in court or otherwise unlawfully obtained; (emphasis added).

In *Rodriguez-Serrate*, the defendant presented a false Puerto Rican birth certificate as evidence of his United States citizenship. In response to the defendant's claim that the false birth certificate which he presented to the immigration official was not the type of documentary evidence of citizenship covered by § 1015(c), the First Circuit noted:

> There is ample evidence to indicate that birth certificates are routinely relied on by Puerto Rican officials to determine alien or citizen status. Consequently, appellant's presentment of the certificate in support of a claim of citizenship when he knew it to be based on false information *clearly places it among those documents whose use Congress meant to bar* through enactment of the statute.

Rodriguez-Serrate, 534 F.2d at 11. (Emphasis added).

A normal, ordinary, and logical reading of the language of § 1425, bolstered by our analysis of legal precedent, convinces us that a birth certificate is such "other evidence of citizenship," the unlawful procurement of which implicates the felony provision of § 1425.

B.

[4] Lopez asserts, however, that *Rodriguez-Serrate* is distinguishable because in that case the alien himself falsely represented himself to be an American citizen by using a false birth certificate, and here the only conduct charged was Lopez's falsely registering births. Lopez relies on *United States v. Adiellizzio*, 77 F.2d 841 (2d Cir. 1935), to support her allegation that to maintain a conviction for procuring documents under 18 U.S.C. § 1425, the documents must be related to naturalization proceedings.

These arguments fail for several reasons. Our discussion of *Rodriguez-Serrate* relates to the interpretation of the words "or other evidence of naturalization or of citizenship" as found in both 18 U.S.C. § 1425, the statute in question, and 18 U.S.C. § 1015(c), the statute construed by the First Circuit. Since we can find no reported cases interpreting those words in 18 U.S.C. § 1425, our resort to another circuit's interpretation of a similar immigration statute containing the same words is helpful to our analysis. *Cf. United States v. Smith*, 686 F.2d at 240.

Secondly, Lopez was charged with wilfully and knowingly procuring documentary evidence of United States citizenship for a Mexican alien, Francisco Manuel Romo Virgil, knowing that he was not entitled thereto, not merely with falsely registering births.

Finally, in regard to Lopez's contention that the docu-

ments involved must be related to naturalization proceedings, we note that *Adielizzio* on which Lopez relies for support, involved 18 U.S.C. § 139 which was repealed in 1948[4] and which is not related to the issue at hand.[5]

C.

We must next review the legislative history to determine whether the scope of the statute *sub judice* has been exceeded by the prosecution. In *United States v. Smith*, this court noted that "[i]t is for Congress to say what shall be a crime and how that crime shall be punished; it is not the prerogative of this Court." 686 F.2d at 239. *Williams v. United States*, requires that we resolve the issue in favor of a defendant if we have doubt that Congress intended for the conduct in question to be covered by the statute. *Williams*, 102 S.Ct. at 3093; *United States v. Smith*, 686 F.2d at 249 n. 25.

Lopez argues that nothing in the legislative history of 18 U.S.C. § 1425 evidences an intention to include state birth certificates as "other evidence of citizenship." The government, as may be expected, argues to the contrary.

The statute at issue derives from two major revisions of the immigration laws, the Naturalization Act of 1906 (Act of June 29, 1906, 34 Stat. 596), and the Nationality Act of 1940 (Act of October 14, 1940, 54 Stat. 1163). A review of

[4] Act of June 25, 1948, ch. 645, 62 Stat. 683 (1948).

[5] In *Adielizzio*, the defendants had obtained fraudulent seamen's certificates. The Second Circuit found that seamen's certificates were designed for the protection of American seamen against impressment into service on British ships, that such certificates were not certificates of citizenship nor were they used in any step of naturalization proceeding, and that the proscription by 18 U.S.C. § 139 against "use of any certificate of citizenship knowing the same to be forged or unlawfully obtained" referred only to certificates of naturalization. *Adielizzio*, 77 F.2d at 843-44.

the legislative debates on the 1906 Naturalization Act reveals that the primary concerns of Congress at the time were the widespread fraud and abuse involved in the naturalization of aliens and a distrust of the state courts' involvement in naturalization proceedings. The practice in many large cities was for thousands of aliens to be naturalized fraudulently immediately prior to election day. There was a nearly uniform belief that the state courts contributed to most of the fraudulent practices, and an effort was made to restrict naturalization proceedings to federal courts. That effort failed, however, primarily out of concern for the convenience of those aliens who legitimately deserved to receive their citizenship. This effort was replaced by a compromise that would restrict jurisdiction to federal courts and to those state courts which had unlimited jurisdiction.

Even though the Fifty-Ninth Congress concentrated on the abuses involved in obtaining naturalization, it was not unaware of the importance of birth certificates in this area. The age of an alien was an important determinant in the procedures necessary to gain naturalization. An alien under the age of eighteen who entered the United States with his parents could be naturalized by the naturalization of his father. An alien over that age was required to fulfill all of the naturalization requirements. 40 Cong.Rec. H3642 (statement of Rep. Bonynge).

Age was also important in the identification of the alien. Most of the fraudulent practices in alien naturalization involved perjury, false impersonation, and use of counterfeit certificates of naturalization. S.Rep. No. 4373, 59th Cong., 1st Sess., 2 (1906). In an effort to stem this

abuse, the new law required an alien to obtain a certificate of registry which would be given to him when he landed in the United States. That certificate, as well as his declaration of intention, would contain a description of the alien, and both were required to be attached to his petition for naturalization. 40 Cong.Rec. H3644 (daily ed. March 9, 1906) (statement of Rep. Bonynge).

In describing the certificate of registry, Joel Marks, Assistant United States Attorney of New York stated:

> With respect to this question of identification by means of a certificate from the Commissioner of Immigration, that certificate will absolutely and correctly give the age of the immigrant, because in all foreign countries except England . . . no man can leave without obtaining a passport, and of course the passport is issued on the certificate of his birth, and certain other papers; so that when he comes to the Port of New York he has in his possession a passport which correctly gives the date of his birth.
>
> Consequently, the first step in his process of becoming a citizen, we have the correct date of his birth; . . . we have on record the correct date, not from the man's memory, not as he and his friends would wish us to have it, but as it actually appears from the certificate of his birth at the place where he was born . . . By means of this certificate, we know exactly the date on which the man was born; and no man can then say that he arrived in the United States under the age of eighteen if such was not the case. That is the object of the certificate, in addition to furnishing the description of the alien, which prevents any possibility of any mistake being made as to his age at the time of arrival.

40 Cong.Rec. H7037 (daily ed. May 17, 1906) (read into the record by Rep. Goulden).

Even though the 1906 Act dealt exclusively with natu-

ralization, it is clear that at that early date, Congress considered a violation of the naturalization laws to be a federal offense; it mistrusted the ability of the state courts to enforce a violation of the naturalization laws; and it considered a birth certificate an important source of information for the immigration certificate.

The first appearance of the current statute's language concerning "evidence of citizenship" appeared in the Nationality Act of 1940.[5] The purpose of the 1940 Act was "to revise and codify the nationality laws of the United States in a comprehensive nationality code . . . to amend

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[5] The pertinent portions of the 1940 Act which were incorporated into 18 U.S.C. § 1425 are:

Sec. 346. (a) It is hereby made a felony for any alien or other person, whether an applicant for naturalization or citizenship, or otherwise, and whether an employee of the government of the United States or not —

(2) Knowingly to procure or attempt to procure —

a. The naturalization of any such person, contrary to the provisions of any law; or

b. Documentary *or other evidence of naturalization or of citizenship* of any such person, contrary to the provisions of any law.

(3) To procure or attempt to procure any documentary evidence or *other evidence of naturalization or of citizenship* of any person knowing or having reason to believe that such person is not entitled thereto.

(4) To encourage, advise, aid or assist any person —

. . . . . .

f. Not then entitled or qualified under this Act to obtain such documentary or *other evidence of naturalization of citizenship*, with knowledge that such person was not then so entitled or qualified.

(5) To encourage, aid, advise, or assist any person not entitled to obtain, accept or receive any certificate of arrival, declaration of intention, certificate of citizenship, or *other documentary evidence of naturalization of citizenship*.

a. Knowing the same to have been procured by fraud; or

(7) Knowingly, contrary to the provisions of this Act —

b. To assist in or be a party to the issuance of a certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship or any other documentary evidence of naturalization or citizernship.

Act of October 14, 1940, ch. 876, § 346, 54 Stat. 1163, 1164 (emphasis added).

the law with a view to making it more workable and to strengthen it where experience has found it to be weak . . . and to provide for a tightening up as well as a definite enforcement of our nationality laws." 86 Cong.Rec. 11947 (1940) (statement of Rep. Rees).

The codification consisted of five chapters: Chapter I —Definitions; Chapter II — Nationality at Birth; Chapter III — Nationality Through Naturalization; Chapter IV — Loss of Nationality; Chapter V — Miscellaneous. The Act provided two methods by which a person could become a citizen of the United States. The first is citizenship at birth, most notably by being born in the United States and subject to the jurisdiction thereof. Chapter II. The second method is by naturalization under Chapter III of the Act. Citizenship is automatic in the first case; for naturalization, however, the alien must petition for citizenship.

Lopez contends that the 1940 Nationality Act listed the types of documentary evidence of citizenship to which the statute was directed* and that there is no mention of state birth certificates in naturalization proceedings. We do not

* The penal provisions of the 1940 Act were found in section 346. Lopez cites portions of two of the thirty-four paragraphs therefrom as dispositive of the "documentary evidence of citizenship" issue. The first, § 346(5) was included in the current version of 18 U.S.C. § 1425. The second, § 346(9) was not. The two paragraphs read in pertinent part:

Sec. 346. (a) It is hereby made a felony . . . . . .

(5) To encourage, aid, advise, or assist any person not entitled thereto to obtain, accept, or receive any certificate of arrival, declaration of intention, certificate of citizenship, or other documentary evidence of naturalization or citizenship.

b. Knowing the same to have been procured by the use or means of any false name or false statement given or made with the intent to procure the issuance of such certificate of arrival, declaration of intention, certificate of naturalization, or certificate of citizenship,

read the statute so narrowly, especially in view of the two methods of obtaining citizenship. Moreover, had Congress intended to list every document covered by the Act, it would not have been necessary to add the phrase "other evidence of citizenship." Finally, both this court and the First Circuit have held that birth certificates are evidence of citizenship under the penalty provisions of the 1940 Act.

The penal provisions of the 1940 Act found in section 346 made each of thirty-four separate acts a felony violation of the nationality laws. Each separate act was placed in a separate paragraph under section 346(a). Five of those paragraphs were consolidated into 18 U.S.C. § 1425.* Another of the thirty-four violations* formed the basis of 18 U.S.C. § 1015, the statute at issue in *Rodriguez-Serrate* wherein the First Circuit found that birth certificates were "other documentary evidence of citizenship" included in the Act. *Rodriguez-Serrate*, 534 F.2d at 11. *See supra* part II A. Finally, an earlier panel of this court, in

footnote 7 continued
or other documentary evidence of citizenship, or . . . .

(9) Falsely to make, forge, or counterfeit any oath, notice, affidavit, certificate of arrival, declaration of intention, certificate of narturalization, certificate or citizenship, or any other documentary evidence of naturalization or of citizenship, or any order, record, signature, or other instrument, paper, or proceedings, required or authorized by any law relating to naturalization or citizenship.

* 18 U.S.C. § 1425 derived from a consolidation of section 346(a), paras. 2-5 and para. 7. *See supra* note 6.

* 18 U.S.C. § 1015(c) was based on section 346(a)(16) which reads: [it shall be a felony for any person]

(16) To use or attempt to use any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or other documentary evidence of naturalization or of citizenship heretofore or which may hereafter be issued or granted, knowing the same to be forged, counterfeited, or antedated, or to have been procured by fraud or by false evidence, or without appearance or hearing of the applicant in court where such appearance or hearing are required, or otherwise unlawfully obtained.

interpreting another portion of the penalty provisions of the 1940 Act[10] hesitated not at all to find that the "presentation of a false birth certificate by an alien as evidence of asserted citizenship would constitute a violation of [18 U.S.C. § 911]." *United States v. Henry*, 604 F.2d 908, 916 (5th Cir. 1979).

In view of the legislative history and the earlier interpretations of the penal provisions of the 1940 Act, we conclude that a birth certificate is such "other evidence of citizenship" and that its fraudulent procurement as proof of United States citizenship for an alien is proscribed by 18 U.S.C. § 1425. In other words, the scope of the statute has not been exceeded by this prosecution.

D.

Lopez finally contends that the registration of birth certificates has always been an area of state regulation in Texas, and that to apply § 1425 to the fraudulent registration of birth certificates would render a wide range of conduct related to other documents traditionally regulated by the state, violative of federal law. In *Williams v. United States* the Court stated:

> Given this background — a statute that is not unambiguous in its terms and that if applied here would render a wide range of conduct violative of federal law, a legislative history that fails to evidence congressional awareness of the statute's claimed scope, and a subject matter that traditionally has been regulated by the state — we believe that a narrow interpretation of [the statute] would be consistent with our

[10] Sec. 346(a)(18) reads:

> [It shall be a felony for any person]
> (18) Knowingly to falsely represent himself to be a citizen of the United States without having been naturalized or admitted to citizenship, or without otherwise being a citizen of the United States.

usual approach to the construction of criminal statutes.

Williams, 102 S.Ct. at 3095.

Lopez argues that this language of *Williams* requires that we read the immigration laws as excluding birth certificates from "other evidence of citizenship." The *Williams* Court, however, continued: "The rule of lenity does not give courts license to disregard otherwise applicable enactments." *Williams*, 102 S.Ct. at 3095.

Unlike *Williams*, we do not have an ambiguous statute. One need not strain the ordinary and logical meaning of "other evidence of citizenship" to find that birth certificates are covered by the language. Indeed, all previous courts which have considered the question have so held.

[5] Moreover, the legislative history of § 1425 does not fail to evidence a recognition that birth certificates would be used to provide important information leading to citizenship. The Immigration Office now requires state birth certificates in immigration proceedings wherein a person seeks to establish United States citizenship based on birth in the United States, and although the registration of state birth certificates is traditionally regulated by state law, a violation of the immigration laws has long been considered a federal offense. Moreover, the mere fact that a state criminal statute covers certain activities does not preclude the congress from making the same activities a federal crime.

Finally, Lopez cannot seriously argue that she was not fully apprised that procuring a state birth certificate for a Mexican alien to prove that he was not an American citizen was a federal crime. She was not indicted merely for falsely registering state birth certificates; her crime derived from attempting to procure evidence of American citizenship for a Mexican alien, knowing that he was not entitled thereto. This

conduct comfortably falls within the proscribed activities of 18 U.S.C. § 1425.

Having reviewed the statute in the light of both *Williams v. United States* and *United States v. Smith*, we conclude that "other evidence of citizenship" found in 18 U.S.C. § 1425 covers birth certificates and that the activities for which Lopez was indicted were well within the scope of the statute. We thus affirm the district court's denial of the writ of habeas corpus.

AFFIRMED.

Appendix B

484 FEDERAL SUPPLEMENT

UNITED STATES of America

v.

Emma F. LOPEZ.

Crim. No. L-80-10.

United States District Court,
S. D. Texas,
Laredo Division

Feb. 15, 1980.

ORDER

The Defendant, Emma F. Lopez, was indicted for conspiracy to procure a certificate of American citizenship for a person not entitled to one as well as the underlying substantive offense. 18 U.S.C. §§371, 1425 (1976). The Defendant has moved to dismiss the indictment apparently on the ground that the document which forms the basis of the indictment, namely a Texas birth certificate, is not a "certificate or evidence of . . . citizenship" as that term is used in the statute. *Id.* § 1425. Although the Defendant has cited no cases in support of her position, she is perhaps relying on cases interpreting section 1546, which is also contained in Title 18 of the United States Code. *See generally United States v. Campos-Serrano*, 404 U.S. 293 (1971); *United States v. Vargas*, 380 F.Supp. 1162 (E.D. N.Y. 1974). In a recent case, this Court dismissed an indictment under section 1546 and held that possession of a Texas Delayed Birth Certificate could not form the basis for a conviction under that statute since it was not an entry document issued by the United States.

United States v. Elizondo, No. L-79-269 (S.D. Tex. Jan 22, 1980). The decision in that case, however, was limited to violations of section 1546, which, by its terms, proscribes possession of "document[s] required for entry into the United States . . ." 18 U.S.C. § 1546 (1976). The statute under which the Defendant is charged is not so limited.

The only question which this Court must then address is whether a Texas birth certificate is a "certificate or evidence of . . . citizenship." *Id.* § 1425. This Court has been unable to locate any cases construing this term within the context of section 1425. However, the same term is also employed in 18 U.S.C. § 1015(c), which proscribes the use of certain documentary evidence of citizenship knowing it to be false. *Se id.* § 1015(c). A federal court, interpreting that statute, has held that a Puerto Rican birth certificate was "the type of documentary evidence of citizenship covered by §1015(c)." *United States v. Rodriguez Serrate*, 534 F.2d 7, 11 (1st Cir. 1976).

Moreover, it must be noted that Section 1425 refers to "any certificate *or evidence* of . . . citizenship" and the indictment in this case speaks of "documentary evidence of citizenship". Even if a Texas birth certificate might not be a "certificate of citizenship", the Court believes that it would unquestionably be "evidence of citizenship". *See generally Casares-Moreno v. United States*, 226 F.2d 873, 875 (9th Cir. 1955); *Toi v. Brownwell*, 219 F.2d 642, 644 (9th Cir. 1955); *Liacakos v. Kennedy*, 195 F.Supp. 630, 6 32 (D.D.C. 1961).

A violation of section 1425 having been properly alleged, the Defendant's Motion to Dismiss the Indictment is hereby DENIED.

DONE this 14th day of February, 1980, at Laredo, Texas.

/s/ George P. Kagen
U. S. District Judge

Appendix C

UNITED STATES of America

v.

Emma F. LOPEZ.

Crim. No. L-80-10.

United States District Court,
S. D. Texas,
Laredo Division

COUNT 2

That on or about October 22, 1979, within the Laredo Division of the Southern District of Texas, and within the jurisdiction of this Court, EMMA F. LOPEZ did wilfully and knowingly procure, or attempt to procure, contrary to law, documentary evidence of citizenship of a certain alien named Francisco Manuel Romo-Vigil, a citizen of the Republic of Mexico, knowing said person was not entitled thereto, by causing his birth certificate to be registered in the name of Francisco Manuel Romo, Jr. as having occurred or being born on October 14, 1979 in Laredo, Texas; defendant well knowing that the said Francisco Manuel Romo-Vigil was in truth and fact born in the Republic of Mexico.

(Violation: Title 18, United States Code, Section 1425.)

NO. 83-54

Office-Supreme Court, U.S.
FILED
JUL 14 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

_____TERM, 1983

EMMA F. LOPEZ, PETITIONER

vs.

THE UNITED STATES OF AMERICA

ANNEX TO
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JACOB G. HORNBERGER
4115 N. Central Expressway
Suite E
Dallas, Texas 75204
(214) 522-8021

ATTORNEY FOR PETITIONER

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"A"

1906 STATUTE

June 29, 1906.
[H. R. 15442.]
[Public, No. 358.]

CHAP. 3592.—An Act To establish a Bureau of Immigration and Naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States.

Department of Commerce and Labor. Immigration and Naturalization Bureau.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the designation of the Bureau of Immigration in the Department of Commerce and Labor is hereby changed to the "Bureau of Immigration and Naturalization," which said Bureau, under the direction and control of the Secretary of Commerce and Labor, in addition to the duties now provided by law, shall have charge of all matters concerning the naturalization of aliens.

Registry of alien immigrants.

That it shall be the duty of the said Bureau to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this Act of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes.

Certificates of registry.

And it shall be the duty of said commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.

Additional offices, employees, etc.
Post, p. 1559.

SEC. 2. That the Secretary of Commerce and Labor shall provide the said Bureau with such additional furnished offices within the city of Washington, such books of record and facilities, and such additional assistants, clerks, stenographers, typewriters, and other employees as may be necessary for the proper discharge of the duties imposed by this Act upon such Bureau, fixing the compensation of such additional employees until July first, nineteen hundred and seven, within the appropriations made for that purpose.

Naturalization of aliens.
R. S., sec. 2165, p. 378.

SEC. 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

Courts given jurisdiction.

United States circuit and district courts now existing, or which may hereafter be established by Congress in any State, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

Restricted to residents of district.

That the naturalization jurisdiction of all courts herein specified, State, Territorial, and Federal, shall extend only to aliens resident within the respective judicial districts of such courts.

Blank forms to be furnished.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Immigration and Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said Bureau.

Proceedings.

SEC. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

Declaration of intention. Qualifications, etc.

First. He shall declare on oath before the clerk of any court authorized by this Act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time

a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: *Provided, however*, That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

Proviso.
Previous declarations.

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided*, That if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting.

Petitions for citizenship certificates. Requirements.

Proviso.
Previous declarations.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

Declarations as to anarchy and polygamy.

Renunciation of other allegiance.

Intention of permanent residence, etc.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

Evidence as to character, etc.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrives in the United States after the passage of this Act, stating the date, place, and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Certificates of arrival and intention, to be filed.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance

Declaration in open court.

and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Evidence of residence, etc., required.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Additional testimony.

Former titles, etc., to be renounced.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Widows and minor children.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provisions of this Act, be naturalized without making any declaration of intention.

Public notice of petition, hearing, etc.

SEC. 5. That the clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpœna for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses can not be produced upon the final hearing other witnesses may be summoned.

Subpœnas to witnesses.

Filing and docketing.

Hearings.

SEC. 6. That petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition: *Provided*, That no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful, at the time and as a part of the naturalization of any alien, for the court, in its discretion, upon the petition of such alien, to make a decree changing the name of said alien, and his certificate of naturalization shall be issued to him in accordance therewith.

Proviso.
Election-day restriction.

Change of name.

Naturalization forbidden to anarchists or polygamists.

SEC. 7. That no person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized

government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

Speaking English required.

SEC. 8. That no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language: *Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: *And provided further*, That the requirements of this section shall not apply to any alien who has prior to the passage of this Act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further*, That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

Proviso. Physical incapacity.

Not applicable to prior declarations.

Homestead entrymen.

Final hearings.

SEC. 9. That every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

Record of orders, etc.

Evidence of residence.

SEC. 10. That in case the petitioner has not resided in the State, Territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the State, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Immigration and Naturalization and the United States attorney for the district in which said witnesses may reside.

Examinations, etc., in opposition.

SEC. 11. That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

Court to keep duplicates of declarations and certificates.

SEC. 12. That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this Act to keep and file a duplicate of each declaration of intention made before him and to send to the Bureau of Immigration and Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said Bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said Bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said Bureau.

Papers in rejected cases.

Penalty for failure of clerk.

In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dol-

lars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

Responsibility for blanks.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the Bureau of Immigration and Naturalization, and shall account for the same to the said Bureau whenever required so to do by such Bureau. No certificate of citizenship received by any such clerk which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the said Bureau; and in case any such clerk shall fail to return or properly account for any certificate furnished by the said Bureau, as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.

Return of defaced, etc., blanks.

Penalty.

Fees.

SEC. 13. That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

Declaration.

For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

Petition, certificate, etc.

For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.

Disposal of fees.

The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in such naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the Bureau of Immigration and Naturalization, and paid over to such Bureau within thirty days from the close of each quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the Department of Commerce and Labor, who shall thereupon deposit them in the Treasury of the United States, rendering an account therefor quarterly to the Auditor for the State and other Departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

Deposit by petitioner for expenses.

In addition to the fees herein required, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpœnaing and paying the legal fees of any witnesses for whom he may request a subpœna, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner: *Provided*, That the clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to said Bureau as in case of other fees to which the United States may be entitled under the provisions of this Act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this Act upon the clerks of courts from fees received by such clerks in naturalization proceedings. And in case the clerk of any court collects fees in excess of the sum of six thousand dollars in any one year, the Secretary of Commerce and Labor may allow to such clerk from the money which the

Proviso. Retention by clerk.

Payment for additional clerks.

Additional allowance.

United States shall receive additional compensation for the employment of additional clerical assistance, but for no other purpose, if in the opinion of the said Secretary the business of such clerk warrants such allowance.

Binding of papers, etc.

SEC. 14. That the declarations of intention and the petitions for naturalization shall be bound in chronological order in separate volumes, indexed, consecutively numbered, and made part of the records of the court. Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate.

Proceedings to cancel certificates illegally procured.

SEC. 15. That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

Notice to holder, etc.

Canceling certificates of persons permanently abroad.

If any alien who shall have secured a certificate of citizenship under the provisions of this Act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Copy of order of cancellation to Bureau.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Immigration and Naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Immigration and Naturalization of such cancellation.

To court of original issue.

Canceling records, etc.

Application to all certificates.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this Act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

Punishment for issuing, etc., false certificates.

SEC. 16. That every person who falsely makes, forges, counterfeits, or causes or procures to be falsely made, forged, or counterfeited, or knowingly aids or assists in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person or persons, shall be guilty of a felony, and a person convicted of such offense shall be punished by imprisonment for not more than ten years, or by a fine of not more than ten thousand dollars, or by both such fine and imprisonment.

Punishment for engraving, printing, selling, etc., counterfeits.

SEC. 17. That every person who engraves or causes or procures to be engraved, or assists in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship, or who sells any such plate, or who brings into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor, or other proper officer, and any person who has in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use such plate or suffer the same to be used in forging or counterfeiting any such certificate or any part thereof; and every person who prints, photographs, or in any other manner causes to be printed, photographed, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof, or who sells any such certificate, or brings the same into the United States from any foreign place, except by direction of some proper officer of the United States, or who has in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent to unlawfully use the same, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment at hard labor for not more than ten years, or by both such fine and imprisonment.

Punishment for illegally issuing, etc., certificates.

SEC. 18. That it is hereby made a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citizenship contrary to the provisions of this Act, except upon a final order under the hand of a court having jurisdiction to make such order, and upon conviction thereof such clerk or other person shall be punished by imprisonment for not more than five years and by a fine of not more than five thousand dollars, in the discretion of the court.

Punishment for unlawful possession of blank certificates.

SEC. 19. That every person who without lawful excuse is possessed of any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization, with intent unlawfully to use the same, shall be imprisoned at hard labor not more than five years or be fined not more than one thousand dollars.

Punishment for neglecting to render accounts, etc.

SEC. 20. That any clerk or other officer of a court having power under this Act to naturalize aliens, who willfully neglects to render true accounts of moneys received by him for naturalization proceedings or who willfully neglects to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, shall be deemed guilty of embezzlement of the public moneys, and shall be punishable by imprisonment for not more than five years, or by a fine of not more than five thousand dollars, or both.

Punishment for receiving, etc., illegal fees.

SEC. 21. That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings, or to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

Punishment for issuing false acknowledgments, etc.

SEC. 22. That the clerk of any court exercising jurisdiction in naturalization proceedings, or any person acting under authority of this Act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition, or certificate of citizenship, or other paper or writing required to be executed under the provisions of this Act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years.

Punishment for fraudulently obtaining naturalization.

SEC. 23. That any person who knowingly procures naturalization in violation of the provisions of this Act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Accessories.

Limit for prosecutions.

SEC. 24. That no person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act unless the indictment is found or the information is filed within five years next after the commission of such crime.

Prosecution of prior offenses.

SEC. 25. That for the purpose of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to the date when this Act shall go into effect, the existing naturalization laws shall remain in full force and effect.

Laws repealed.
R. S., secs. 2165, 2167, 2168, 2173, pp. 378, 379, 380.
Vol. 32, p. 1222.

SEC. 26. That sections twenty-one hundred and sixty-five, twenty-one hundred and sixty-seven, twenty-one hundred and sixty-eight, twenty-one hundred and seventy-three, of the Revised Statutes of the United States of America, and section thirty-nine of chapter one thousand and twelve of the Statutes at Large of the United States of America for the year nineteen hundred and three, and all Acts or parts of Acts inconsistent with or repugnant to the provisions of this Act are hereby repealed.

Forms.

SEC. 27. That substantially the following forms shall be used in the proceedings to which they relate:

Declaration of intention.

DECLARATION OF INTENTION.

(Invalid for all purposes seven years after the date hereof.)

...., ss:

I, ..., aged ..... years, occupation ....., do declare on oath (affirm) that my personal description is: Color ....., complexion ....., height ....., weight ....., color of hair ..., color of eyes ....., other visible distinctive marks ... ; I was born in ..... on the ..... day of ....., anno Domini ...; I now reside at .....; I emigrated to the United States of America from ..... on the vessel ...; my last foreign residence was ... It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and

particularly to ....., of which I am now a citizen (subject); I arrived at the (port) of ....., in the State (Territory or District) of ..... on or about the ..... day of ..... anno Domini .....; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me God.

(Original signature of declarant) .....

Subscribed and sworn to (affirmed) before me this ..... day of ....., anno Domini .....

[L. S.]

.....

(Official character of attestor.)

Petition for naturalization.

PETITION FOR NATURALIZATION.

..... Court of .....

In the matter of the petition of .... to be admitted as a citizen of the United States of America.

To the '..... Court:

The petition of .... respectfully shows:

First. My full name is .....

Second. My place of residence is number .... street, city of ....., State (Territory or District) of .....

Third. My occupation is .....

Fourth. I was born on the ..... day of ..... at .....

Fifth. I emigrated to the United States from ....., on or about the ..... day of ....., anno Domini ....., and arrived at the port of ....., in the United States, on the vessel .....

Sixth. I declared my intention to become a citizen of the United States on the ..... day of ..... at ....., in the ..... court of .....

Seventh. I am .. married. My wife's name is ..... She was born in ..... and now resides at ..... I have ..... children, and the name, date, and place of birth and place of residence of each of said children is as follows: ....; ....; ....

Eighth. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to ....., of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to wit, since ....., anno Domini ....., and in the State (Territory or District) of ..... for one year at least next preceding the date of this petition, to wit, since ..... day of ....., anno Domini ..... .

Eleventh. I have not heretofore made petition for citizenship to any court. (I made petition for citizenship to the ..... court of ..... at ....., and the said petition was denied by the said court for the following reasons and causes, to wit, ..., and the cause of such denial has since been cured or removed.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of Commerce and Labor required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Dated .....

(Signature of petitioner) ....

...., ss:

...., being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this ..... day of ..... anno Domini .....

[L. S.]

....,

Clerk of the ..... Court.

AFFIDAVIT OF WITNESSES.

Affidavit of witnesses.

..... Court of .....

In the matter of the petition of .... to be admitted a citizen of the United States of America.

...., ss:

...., occupation ....., residing at ....., and ...., occupation ....., residing at ....., each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known ..... the petitioner above mentioned, to be a resident of the United States for a period of at least five years continuously immediately preceding the date of filing his petition, and of the State (Territory or District) in which the above-entitled application is made for a period of ..... years immediately preceding the date of filing his petition; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted as a citizen of the United States.

....

....

Subscribed and sworn to before me this ..... day of ....., nineteen hundred and ..... .

[L. S.]

....,

(Official character of attestor).

CERTIFICATE OF NATURALIZATION.

Certificate of naturalization.

Number .....

Petition, volume ....., page .....

Stub, volume ....., page .....

(Signature of holder) ....

Description of holder: Age, ...; height, ... ; color, ... ; complexion, ...; color of eyes, ...; color of hair, ... ; visible distinguishing marks, ... Name, age, and place of residence of wife, ..., ..., ... Names, ages, and places of residence of minor children, ..., ..., ...; ....., ..., ..., ..., ...

....., ss:

Be it remembered, that at a ..... term of the ..... court of ....., held at ..... on the ..... day of ....., in the year of our Lord nineteen hundred and ....., ... who previous to his (her) naturalization was a citizen or subject of ....., at present residing at number ..... street, ... city (town), ... State (Territory or District), having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this State for one year immediately preceding the date of the hearing of his (her) petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that ..he was entitled to be so admitted, it was thereupon ordered by the said court that ..he be admitted as a citizen of the United States of America.

In testimony whereof the seal of said court is hereunto affixed on the ..... day of ....., in the year of our Lord nineteen hundred and ....., and of our independence the .....

[L. S.]

....

(Official character of attestor).

Stub of certificate.

STUB OF CERTIFICATE OF NATURALIZATION.

No. of certificate, ...

Name ....; age, ...

Declaration of intention, volume ....., page .....

Petition, volume ....., page .....

Name, age, and place of residence of wife, ... Names, ages, and places of residence of minor children, ...; ....

United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law.

Effect.

SEC. 31. That this Act shall take effect and be in force from and after ninety days from the date of its passage: *Provided*, That sections one, two, twenty-eight, and twenty-nine shall go into effect from and after the passage of this Act.

Proviso. Bureau sections.

Approved, June 29, 1906.

CHAP. 3593.—An Act For the protection of wild animals in the Grand Canyon Forest Reserve.

June 29, 1906. [S. 3752.] [Public, No. 339.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized to designate such areas in the Grand Canyon Forest Reserve as should, in his opinion, be set aside for the protection of game animals and be recognized as a breeding place therefor.

Grand Canyon Forest Reserve. Protection of wild animals in. Post, p. 3283.

SEC. 2. That when such areas have been designated as provided in section one of this Act, hunting, trapping, killing, or capturing of game animals upon the lands of the United States within the limits of said areas shall be unlawful, except under such regulations as may be prescribed from time to time by the Secretary of Agriculture; and any person violating such regulations or the provisions of this Act shall be deemed guilty of a misdemeanor, and shall, upon conviction in any United States court of competent jurisdiction, be fined in a sum not exceeding one thousand dollars, or by imprisonment for a period not exceeding one year, or shall suffer both fine and imprisonment, in the discretion of the court.

Hunting, etc., unlawful.

Penalty.

SEC. 3. That it is the purpose of this Act to protect from trespass the public lands of the United States and the game animals which may be thereon, and not to interfere with the operation of the local game laws as affecting private, State, or Territorial lands.

Purpose of the law.

Approved, June 29, 1906.

CHAP. 3594.—An Act To prevent cruelty to animals while in transit by railroad or other means of transportation from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, and repealing sections forty-three hundred and eighty-six, forty-three hundred and eighty-seven, forty-three hundred and eighty-eight, forty-three hundred and eighty-nine, and forty-three hundred and ninety of the United States Revised Statutes.

June 29, 1906. [S. 3415.] [Public, No. 340.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, whose road forms any part of a line of road over which cattle, sheep, swine, or other animals shall be conveyed from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, or the owners or masters of steam, sailing, or other vessels carrying or transporting cattle, sheep, swine, or other animals from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, shall confine the same in cars, boats, or vessels of any description for a period longer than twenty-eight consecutive hours without unloading the same in a humane manner, into properly equipped pens for rest, water, and feeding, for a period of at least five consecutive hours, unless

Transportation of animals. Time limit for continuous confinement on cars and vessels.

"B"
1940 STATUTE

therefrom to the purchase of feed, supplementing the regular allowance and issue for the animals of the said units, and for the purchase of stable equipment, and horseshoers', saddlers', blacksmiths', and wagoners' tools not an article of issue to such organizations."

SEC. 5. That the Act of July 15, 1939 (53 Stat. 1042), be, and the same is hereby, repealed and reenacted to read as follows: 32 U. S. C., Supp. V, § 104d.

"That neither of the provisions of the Act of June 15, 1936 (49 Stat. 1507), nor any other law of the United States shall be construed as limiting the power and authority of the Secretary of War, under such regulations as he may prescribe, to require the hospitalization, medical, and surgical treatment and domiciliary care so long as any or all are necessary of persons in the active military service or on active duty, or in training, under the provisions of sections 92, 94, 97, 99, and 113 of the National Defense Act of June 3, 1916, as amended, and to incur obligations with respect thereto, without reference to their line-of-duty status: *Provided*, That this Act shall not include those individuals who are on an armory-drill status except officers, warrant officers, and enlisted men of the National Guard who suffer personal injury (as distinguished from disease) when participating in aerial flights prescribed under the provisions of section 92: *And provided further*, That this Act shall not apply to officers and enlisted men who are treated in private hospitals or by civilian physicians while on furloughs or leaves of absence in excess of twenty-four hours."

10 U. S. C., Supp. V, §§ 455a–d; 32 U. S. C., Supp. V, §§ 154a–c.

Required hospitalization and medical treatment.

39 Stat. 205, 207, 211.

Provisos.
Exclusion of individuals on armory-drill status; exception.

Private treatment.

Approved, October 14, 1940.

[CHAPTER 876]

AN ACT

To revise and codify the nationality laws of the United States into a comprehensive nationality code.

October 14, 1940
[H. R. 9980]
[Public, No. 853]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the nationality laws of the United States are revised and codified as follows:

Nationality Act of 1940.

TITLE I

SECTION 1. This Act may be cited as the Nationality Act of 1940.

Short title.

CHAPTER I—DEFINITIONS

SEC. 101. For the purposes of this Act—

(a) The term "national" means a person owing permanent allegiance to a state.

"National."

(b) The term "national of the United States" means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. It does not include an alien.

"National of the United States."

(c) The term "naturalization" means the conferring of nationality of a state upon a person after birth.

"Naturalization."

(d) The term "United States" when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States.

"United States."

(e) The term "outlying possessions" means all territory, other than as specified in subsection (d), over which the United States exercises rights of sovereignty, except the Canal Zone.

"Outlying possessions."

(f) The term "parent" includes in the case of a posthumous child a deceased parent.

"Parent."

(g) The term "minor" means a person under twenty-one years of age.

"Minor."

Post, p. 1180.

"State."
Post, p. 1180.

"Naturalization court."

"Clerk of court."

"Commissioner" and "Deputy Commissioner."

"Attorney General."

"Service."

"Designated examiner."
Post, p. 1156.

"Child."

"Foreign state."
Post, p. 1170.

Place of general abode.
Post, pp. 1162, 1169, 1170.

SEC. 102. For the purposes of chapter III of this Act—

(a) The term "State" includes (except as used in subsection (a) of section 301), Alaska, Hawaii, the District of Columbia, Puerto Rico, and the Virgin Islands of the United States.

(b) the term "naturalization court" (unless otherwise particularly described), means a court authorized by subsection (a) of section 301 to exercise naturalization jurisdiction.

(c) The term "clerk of court" means a clerk of a naturalization court.

(d) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(e) The term "Attorney General" means the Attorney General of the United States.

(f) The term "Service" means the Immigration and Naturalization Service of the United States Department of Justice.

(g) The term "designated examiner" means an examiner or other officer of the Service designated under section 333 by the Commissioner.

(h) The term "child" includes a child legitimated under the law of the child's residence or domicile, whether in the United States or elsewhere; also a child adopted in the United States, provided such legitimation or adoption takes place before the child reaches the age of sixteen years and the child is in the legal custody of the legitimating or adopting parent or parents.

SEC. 103. For the purposes of subsections (a), (b), and (c) of section 404 of this Act, the term "foreign state" includes outlying possessions of a foreign state, but does not include self-governing dominions or territory under mandate, which, for the purposes of these subsections, shall be regarded as separate states.

SEC. 104. For the purposes of sections 201, 307 (b), 403, 404, 405, 406, and 407 of this Act, the place of general abode shall be deemed the place of residence.

CHAPTER II—NATIONALITY AT BIRTH

Nationals and citizens of U. S. at birth.

SEC. 201. The following shall be nationals and citizens of the United States at birth:

(a) A person born in the United States, and subject to the jurisdiction thereof;

(b) A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

(c) A person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one of its outlying possessions, prior to the birth of such person;

(d) A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(e) A person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person;

(f) A child of unknown parentage found in the United States, until shown not to have been born in the United States:

(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of the Government of the United States or a bona fide American, educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation;

(h) The foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934.

Birth in Puerto Rico.

SEC. 202. All persons born in Puerto Rico on or after April 11, 1899, subject to the jurisdiction of the United States, residing on the effective date of this Act in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States.

Birth in Canal Zone.

SEC. 203. (a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

Birth in Republic of Panama.

(b) Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, is declared to be a citizen of the United States.

Nationals, but not citizens, of U. S. at birth.
Ante, p. 1138.

SEC. 204. Unless otherwise provided in section 201, the following shall be nationals, but not citizens, of the United States at birth:

(a) A person born in an outlying possession of the United States of parents one of whom is a national, but not a citizen, of the United States;

(b) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have resided in the United States or one of its outlying possessions prior to the birth of such person;

(c) A child of unknown parentage found in an outlying possession of the United States, until shown not to have been born in such outlying possession.

Child born out of wedlock.
Infra, p. 1139.

SEC. 205. The provisions of section 201, subsections (c), (d), (e), and (g), and section 204, subsections (a) and (b), hereof apply, as of the date of birth, to a child born out of wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.

Status in absence of legitimation, etc.

In the absence of such legitimation or adjudication, the child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status.

CHAPTER III—NATIONALITY THROUGH NATURALIZATION

GENERAL PROVISIONS

JURISDICTION TO NATURALIZE

Courts having naturalization jurisdiction.

SEC. 301. (a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States now existing, or which may hereafter be established by Congress in any State, Districts Courts of the United States for the Territories of Hawaii and Alaska, and for the District of Columbia and for Puerto Rico, and the District Court of the Virgin Islands of the United States; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdictions of such courts, except as otherwise specifically provided in this Act.

Petitions within State judicial districts, etc.

(b) A person who petitions for naturalization in any State court having naturalization jurisdiction, may petition within the State judicial district or State judicial circuit in which he resides, whether or not he resides within the county in which the petition for naturalization is filed.

Blank forms.

(c) The courts herein specified, upon request of the clerks of such courts, shall be furnished from time to time by the Commissioner or a Deputy Commissioner with such blank forms as may be required in naturalization proceedings.

Manner, etc., of naturalization.

(d) A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this Act, and not otherwise.

SUBSTANTIVE PROVISIONS

ELIGIBILITY FOR NATURALIZATION

Sex or marriage no bar.

SEC. 302. The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of sex or because such person is married.

Racial limitation.

SEC. 303. The right to become a naturalized citizen under the provisions of this Act shall extend only to white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere: *Provided*, That nothing in this section shall prevent the naturalization of native-born Filipinos having the honorable service in the United States Army, Navy, Marine Corps, or Coast Guard as specified in section 324, nor of former citizens of the United States who are otherwise eligible to naturalization under the provisions of section 317.

Proviso.
Eligibility of certain Filipinos, etc.

Post, p. 1149.

Post, p. 1148.

English language requirement.

SEC. 304. No person except as otherwise provided in this Act shall hereafter be naturalized as a citizen of the United States upon his own petition who cannot speak the English language. This requirement shall not apply to any person physically unable to comply therewith, if otherwise qualified to be naturalized.

Persons ineligible for naturalization.

SEC. 305. No person shall hereafter be naturalized as a citizen of the United States—

Advising opposition to all organized government.

(a) Who advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that advises, advocates, or teaches opposition to all organized government; or

Advocating overthrow of U. S. Government, etc.

(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—

(1) the overthrow by force or violence of the Government of the United States or of all forms of law; or

(2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or any other organized government, because of his or their official character; or

(3) the unlawful damage, injury, or destruction of property; or

(4) sabotage.

Publishing, etc., certain written or printed matter.

(c) Who writes, publishes, or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation, distribution, publication, or display any written or printed matter advising, advocating, or teaching opposition to all organized government, or advising, advocating, or teaching—

(1) the overthrow by force or violence of the Government of the United States or of all forms of law; or

(2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government; or

(3) the unlawful damage, injury, or destruction of property; or

(4) sabotage.

Holding membership in certain organizations, etc.

(d) Who is a member of or affiliated with any organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (c).

Definition of terms.

For the purpose of this section—

(1) the giving, loaning, or promising of money or anything of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and

(2) the giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching or affiliation.

Applicability of provisions.

The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization is, or has been, found to be within any of the classes enumerated in this section, notwithstanding that at the time petition is filed he may not be included in such classes.

Ineligibility of convicted deserters.

SEC. 306. A person who, at any time during which the United States has been or shall be at war, deserted or shall desert the military or naval forces of the United States, or who, having duly enrolled, departed, or shall depart from the jurisdiction of the district in which

enrolled, or went or shall go beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall, upon conviction thereof by a court martial, be ineligible to become a citizen of the United States; and such deserters shall be forever incapable of holding any office of trust or of profit under the United States, or of exercising any rights of citizens thereof.

Residence and character requirements.

SEC. 307. (a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

Presumption of broken continuity of residence.

(b) Absence from the United States for a continuous period of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the petition for naturalization, or during the period between the date of filing the petition and the date of final hearing, shall be presumed to break the continuity of such residence, but such presumption may be overcome by the presentation of evidence satisfactory to the naturalization court that such individual had a reasonable cause for not sooner returning to the United States. Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the petition for naturalization or during the period between the date of filing the petition and the date of final hearing, shall break the continuity of such residence, except that in the case of an alien who has resided in the United States for at least one year, during which period he has made a declaration of intention to become a citizen of the United States, and who thereafter is employed by or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof, no period of absence from the United States shall break the continuity of residence if—

Overcoming presumption.

Absence from U. S. for designated period.

(1) Prior to the beginning of such period (whether such period begins before or after his departure from the United States) the alien has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries of such firm or corporation, and

(2) Such alien proves to the satisfaction of the court that his absence from the United States for such period has been for such purpose.

Absence from U. S. under U. S. employment, etc.

(c) No period of absence from the United States during the five years immediately preceding June 25, 1936, shall be held to have broken the continuity of residence required by the naturalization laws if the alien proves to the satisfaction of the Attorney General and

the court that during all such period of absence he has been under employment by, or contract with, the United States, or such American institution of research, or American firm or corporation, described in subsection (b) of this section, and has been carrying on the activities described in that subsection in its behalf.

Residence within U. S.

(d) The following shall be regarded as residence within the United States within the meaning of this chapter:

Service on U. S. vessels.

(1) Honorable service on vessels owned directly by the Government of the United States, whether or not rendered at any time prior to the applicant's lawful entry into the United States: *Provided*, That this subdivision shall not apply to service on vessels operating in and about the Canal Zone in connection with the maintenance, operation, protection, and civil government of the Panama Canal and Canal Zone.

Proviso. Certain vessels operating in Canal Zone.

Service on vessels having home ports in U. S.

(2) Continuous service by a seaman on a vessel or vessels whose home port is in the United States and which are of American registry or American owned, if rendered subsequent to the applicant's lawful entry into the United States for permanent residence and immediately preceding the date of naturalization.

Temporary absence of alien clergymen or nuns.

SEC. 308. Any alien who has been lawfully admitted into the United States for permanent residence and who has heretofore been or may hereafter be absent temporarily from the United States solely in his or her capacity as a regularly ordained clergyman or nun, shall be considered as residing in the United States for the purpose of naturalization, notwithstanding any such absence from the United States, but he or she shall in all other respects comply with the requirements of the naturalization laws. Such alien shall prove to the satisfaction of the Attorney General and the naturalization court that his or her absence from the United States has been solely in the capacity hereinbefore described.

REQUIREMENTS AS TO PROOF

Affidavits as to State residence, etc.

SEC. 309. (a) As to each period and place of residence in the State in which the petitioner resides at the time of filing the petition, during the entire period of at least six months immediately preceding the date of filing the petition, there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such period has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

Oral testimony at hearing.

(b) At the hearing on the petition, residence in the State in which the petitioner resides at the time of filing the petition, for at least six months immediately preceding the date of filing the petition, and the other qualifications required by subsection (a) of section 307 during such residence shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by subsection (a) of this section to be included in the petition. At the hearing, residence within the United States during the five-year period, but outside the State, or within the State but prior to the six months immediately preceding the date of filing the petition, and the other qualifications required by subsection (a) of section 307 during such period at such places, shall be proved either by depositions taken in accordance with subsection (e) of section 327, or oral testimony, of at least two such witnesses for each place of residence.

Ante, p. 1142.

Proof of U. S. residence.

Ante, p. 1142.

Post, p. 1151.

Other proof in designated cases.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section the requirements of subsection (a) of section 307 as to the petitioner's residence, moral character, attachment to the principles of the Constitution of the United States, and disposition toward the good order and happiness of the United States may be established by any evidence satisfactory to the naturalization court in those cases under subsection (b) of section 307 in which the alien declarant has been absent from the United States because of his employment by or contract with the Government of the United States or an American institution of research, recognized as such by the Attorney General, or employment by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof.

Ante, p. 1112.

Issuance of subpenas for attendance of witnesses.

(d) The clerk of court shall, if the petitioner requests it at the time of filing the petition for naturalization, issue a subpena for the witnesses named by such petitioner to appear upon the day set for the final hearing, but in case such witnesses cannot be produced upon the final hearing other witnesses may be summoned upon notice to the Commissioner, in such manner and at such time as the Commissioner, with the approval of the Attorney General, may by regulation prescribe. If it should appear after the petition has been filed that any of the verifying witnesses thereto are not competent, and it further appears that the petitioner has acted in good faith in producing such witnesses found to be incompetent, other witnesses may be substituted in accordance with such regulations.

MARRIED PERSONS

Naturalization of alien spouse.
Marriage after Sept. 21, 1922, and prior to May 24, 1934.

SEC. 310. (a) Any alien who, after September 21, 1922, and prior to May 24, 1934, has married a citizen of the United States, or any alien who married prior to May 24, 1934, a spouse who was naturalized during such period and during the existence of the marital relation may, if eligible to naturalization, be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

(1) No declaration of intention shall be required;

(2) In lieu of the five-year period of residence within the United States, and the six months' period of residence in the State where the petitioner resided at the time of filing the petition, the petitioner shall have resided continuously in the United States for at least one year immediately preceding the filing of the petition.

Marriage on or after May 24, 1934.

(b) Any alien who, on or after May 24, 1934, has married or shall hereafter marry a citizen of the United States, or any alien whose husband or wife was naturalized on or after May 24, 1934, and during the existence of the marital relation or shall hereafter be so naturalized may, if eligible for naturalization, be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

(1) No declaration of intention shall be required;

(2) In lieu of the five-year period of residence within the United States, and the six months' period of residence in the State where the petitioner resided at the time of filing the petition, the petitioner shall have resided continuously in the United States for at least three years immediately preceding the filing of the petition.

Validation of naturalization of certain women.

(c) The naturalization of any woman on or after May 24, 1934, by any naturalization court of competent jurisdiction, upon proof of marriage to a citizen or the naturalization of her husband and proof of but one year's residence in the United States is hereby validated only so far as relates to the period of residence required to be proved by such person under the naturalization laws.

Male persons.

(d) The naturalization of any male person on or after May 24, 1934, by any naturalization court of competent jurisdiction, upon proof of marriage to a citizen of the United States after September 21, 1922, and prior to May 24, 1934, or of the naturalization during such period of his wife, and upon proof of three years' residence in the United States, is hereby validated only so far as relates to the period of residence required to be proved by such person under the naturalization laws and the omission by such person to make a declaration of intention.

Naturalization of persons married on or after effective date of section.

SEC. 311. A person who upon the effective date of this section is married to or thereafter marries a citizen of the United States, or whose spouse is naturalized after the effective date of this section, if such person shall have resided in the United States in marital union with the United States citizen spouse for at least one year immediately preceding the filing of the petition for naturalization, may be naturalized after the effective date of this section upon compliance with all requirements of the naturalization laws with the following exceptions:

(a) No declaration of intention shall be required.

(b) The petitioner shall have resided continuously in the United States for at least two years immediately preceding the filing of the petition in lieu of the five-year period of residence within the United States and the six months' period of residence within the State where the naturalization court is held.

When spouse is U. S. citizen regularly employed abroad by U. S. Government, etc.

SEC. 312. An alien, whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, and (3) regularly stationed abroad in such employment, and who is (1) in the United States at the time of naturalization, and (2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions:

(a) No declaration of intention shall be required; and

(b) No prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required.

CHILDREN

Citizenship through naturalization of alien parent; conditions.

SEC. 313. A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, be deemed a citizen of the United States, when—

(a) Such naturalization takes place while such child is under the age of eighteen years; and

(b) Such child is residing in the United States at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years.

Alien parents, or alien parent and former citizen parent; conditions.

SEC. 314. A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(a) The naturalization of both parents; or

(b) The naturalization of the surviving parent if one of the parents is deceased; or

(c) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents; and if—

(d) Such naturalization takes place while such child is under the age of eighteen years; and

(e) Such child is residing in the United States at the time of the naturalization of the parent last naturalized under subsection (a) of this section, or the parent naturalized under subsection (b) or (c) of this section, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

Naturalization upon petition by citizen parent.

SEC. 315. A child born outside of the United States, one of whose parents is at the time of petitioning for the naturalization of the child, a citizen of the United States, either by birth or naturalization, may be naturalized if under the age of eighteen years and not otherwise disqualified from becoming a citizen and is residing permanently in the United States with the citizen parent, on the petition of such citizen parent, without a declaration of intention, upon compliance with the applicable procedural provisions of the naturalization laws.

Naturalization of adopted children; conditions.

SEC. 316. An adopted child may, if not otherwise disqualified from becoming a citizen, be naturalized before reaching the age of eighteen years upon the petition of the adoptive parent or parents if the child has resided continuously in the United States for at least two years immediately preceding the date of filing such petition, upon compliance with all the applicable procedural provisions of the naturalization laws, if the adoptive parent or parents are citizens of the United States, and the child was:

(a) Lawfully admitted to the United States for permanent residence; and

(b) Adopted in the United States before reaching the age of sixteen years; and

(c) Adopted and in the legal custody of the adoptive parent or parents for at least two years prior to the filing of the petition for the child's naturalization.

FORMER CITIZENS OF THE UNITED STATES

Resequisition of citizenship lost through marriage.

SEC. 317. (a) A person who was a citizen of the United States and who prior to September 22, 1922, lost United States citizenship by marriage to an alien or by the spouse's loss of United States citizenship, and any person who lost United States citizenship on or after September 22, 1922, by marriage to an alien ineligible to citizenship, may, if no other nationality was acquired by affirmative act other than such marriage, be naturalized upon compliance with all requirements of the naturalization laws with the following exceptions:

(1) No declaration of intention and no certificate of arrival shall be required, and no period of residence within the United States or within the State where the petition is filed shall be required.

(2) The petition need not set forth that it is the intention of the petitioner to reside permanently within the United States.

(3) The petition may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner.

(4) The petition may be heard at any time after filing if there is attached to the petition at the time of filing a certificate from a naturalization examiner stating that the petitioner has appeared before such examiner for examination.

Such person shall have, from and after the naturalization, the same citizenship status as that which existed immediately prior to its loss.

Repatriation of certain former women citizens.

(b) (1) From and after the effective date of this Act, a woman,

of her marriage prior to September 22, 1922, to an alien, and whose marital status with such alien has or shall have terminated, if no other nationality was acquired by affirmative act other than such marriage, shall, from and after the taking of the oath of allegiance prescribed by subsection (b) of section 335 of this Act, be deemed to be a citizen of the United States to the same extent as though her marriage to said alien had taken place on or after September 22, 1922.

Oath of allegiance.
Post, p. 1157.

(2) Such oath of allegiance may be taken abroad before a diplomatic or consular officer of the United States, or in the United States before the judge or clerk of a naturalization court.

Taking of oath.

(3) Such oath of allegiance shall be entered in the records of the appropriate embassy or legation or consulate or naturalization court, and upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the embassy or legation or consulate or naturalization court, shall be delivered to such woman at a cost not exceeding $1, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department of the United States.

Entry upon records.

(c) A person who shall have been a citizen of the United States and also a national of a foreign state, and who shall have lost his citizenship of the United States under the provisions of section 401 (c) of this Act, shall be entitled to the benefits of the provisions of subsection (a) of this section, except that contained in subdivision (2) thereof. Such person, if abroad, may enter the United States as a nonquota immigrant, for the purpose of recovering his citizenship, upon compliance with the provisions of the Immigration Acts of 1917 and 1924.

Repatriation after military service with foreign state while national thereof.
Post, p. 1169.

SEC. 318. (a) A former citizen of the United States expatriated through the expatriation of such person's parent or parents and who has not acquired the nationality of another country by any affirmative act other than the expatriation of his parent or parents may be naturalized upon filing a petition for naturalization before reaching the age of twenty-five years and upon compliance with all requirements of the naturalization laws with the following exceptions:

Reacquisition of citizenship lost by expatriation of parents.

(1) No declaration of intention and no certificate of arrival and no period of residence within the United States or in a State shall be required;

(2) The petition may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner;

(3) If there is attached to the petition at the time of filing, a certificate from a naturalization examiner stating that the petitioner has appeared before him for examination, the petition may be heard at any time after filing; and

(4) Proof that the petitioner was at the time his petition was filed and at the time of the final hearing thereon a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and that he intends to reside permanently in the United States shall be made by any means satisfactory to the naturalization court.

(b) No former citizen of the United States, expatriated through the expatriation of such person's parent or parents, shall be obliged to comply with the requirements of the immigration laws, if he has not acquired the nationality of another country by any affirmative act other than the expatriation of his parent or parents, and if he has come or shall come to the United States before reaching the age of twenty-five years.

(c) After his naturalization such person shall have the same citizenship status as if he had not been expatriated.

Reacquisition of citizenship lost by cancelation of parent's naturalization.

SEC. 319. (a) A person who as a minor child lost citizenship of the United States through the cancelation of the parent's naturalization on grounds other than actual fraud or presumptive fraud as specified in the second paragraph of section 15 of the Act of June 29, 1906, as amended (34 Stat. 601; 40 Stat. 544, U. S. C., title 8, sec. 405), or who shall lose citizenship of the United States under subsection (c) of section 338 of this Act, may, if such person resided in the United States at the time of such cancelation and if, within two years after such cancelation or within two years after the effective date of this section, such person files a petition for naturalization or such a petition is filed on such person's behalf by a parent or guardian if such person is under the age of eighteen years, be naturalized upon compliance with all requirements of the naturalization laws with the exception that no declaration of intention shall be required and the required five-year period of residence in the United States need not be continuous.

Post, p. 1159.

Beginning date of citizenship.

(b) Citizenship acquired under this section shall begin as of the date of the person's naturalization, except that in those cases where the person has resided continuously in the United States from the date of the cancelation of the parent's naturalization to the date of the person's naturalization under this section, the citizenship of such person shall relate back to the date of the parent's naturalization which has been canceled or to the date of such person's arrival in the United States for permanent residence if such date was subsequent to the date of naturalization of said parent.

PERSONS MISINFORMED OF CITIZENSHIP STATUS

Naturalization without preliminary declaration.

SEC. 320. A person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July 1, 1920, and was on that date otherwise qualified to become a citizen of the United States, except that such person had not made a declaration of intention required by law and who during or prior to that time, because of misinformation regarding the citizenship status of such person, erroneously exercised the rights and performed the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention, and upon satisfactory proof to the court that petitioner has so acted may be admitted as a citizen of the United States upon complying with the other requirements of the naturalization laws.

NATIONALS BUT NOT CITIZENS OF THE UNITED STATES

Naturalization of national if resident of a State.

SEC. 321. A person not a citizen who owes permanent allegiance to the United States, and who is otherwise qualified may, if he becomes a resident of any State, be naturalized upon compliance with the requirements of this Act, except that in petitions for naturalization filed under the provisions of this section, residence within the United States within the meaning of this Act shall include residence within any of the outlying possessions of the United States.

PUERTO RICANS

Acquisition of citizenship; declaration of allegiance.

SEC. 322. A person born in Puerto Rico of alien parents, referred to in the last paragraph of section 5, Act of March 2, 1917 (U. S. C., title 8, sec. 5), and in section 5a, of the said Act, as amended by section 2 of the Act of March 4, 1927 (U. S. C., title 8, sec. 5a), who did not exercise the privilege granted of becoming a citizen of the United States, may make the declaration provided in said paragraph at any time, and from and after the making of such declaration shall be a citizen of the United States.

PERSONS SERVING IN ARMED FORCES OR ON VESSELS

Naturalization of designated World War expatriates.

SEC. 323. A person who, while a citizen of the United States and during the World War in Europe, entered the military or naval service of any country at war with a country with which the United States was then at war, who has lost citizenship of the United States by reason of any oath or obligation taken for the purpose of entering such service, may be naturalized by taking before any naturalization court specified in subsection (a) of section 301 the oaths prescribed by section 335.

Ante, p. 1149; *post*, p. 1157.

Naturalization of persons having U. S. military, etc., service.

SEC. 324. (a) A person, including a native-born Filipino, who has served honorably at any time in the United States Army, Navy, Marine Corps, or Coast Guard for a period or periods aggregating three years and who, if separated from such service, was separated under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years and in the State in which the petition for naturalization is filed for at least six months, if such petition is filed while the petitioner is still in the service or within six months after the termination of such service.

Waiver of certain requirements.

(b) A person filing a petition under subsection (a) of this section shall comply in all respects with the requirements of this chapter except that—

(1) No declaration of intention shall be required;

(2) No certificate of arrival shall be required;

(3) No residence within the jurisdiction of the court shall be required;

(4) Such petitioner may be naturalized immediately if the petitioner be then actually in any of the services prescribed in subsection (a) of this section, and if, before filing the petition for naturalization, such petitioner and at least two verifying witnesses to the petition, who shall be citizens of the United States and who shall identify petitioner as the person who rendered the service upon which the petition is based, have appeared before and been examined by a representative of the Service.

Verification of residence, etc.

(c) In case such petitioner's service was not continuous, petitioner's residence in the United States and State, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing said petition between the periods of petitioner's service in the United States Army, Navy, Marine Corps, or Coast Guard, shall be verified in the petition filed under the provisions of subsection (a) of this section, and proved at the final hearing thereon by witnesses, citizens of the United States, in the same manner as required by section 309. Such verification and proof shall also be made as to any period between the termination of petitioner's service and the filing of the petition for naturalization.

Ante, p. 1143.

Residence requirements in certain cases of terminated service.

(d) The petitioner shall comply with the requirements of section 309 as to continuous residence in the United States for at least five years and in the State in which the petition is filed for at least six months, immediately preceding the date of filing the petition, if the termination of such service has been more than six months preceding the date of filing the petition for naturalization, except that such service shall be considered as residence within the United States or the State.

Service records in lieu of affidavits, etc.

(e) Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such serv-

ice, shall be proved by duly authenticated copies of records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of affidavits and testimony or depositions of witnesses.

Naturalization of persons serving on designated vessels.

SEC. 325. (a) A person who has served honorably or with good conduct for an aggregate period of at least five years (1) on board of any vessel of the United States Government other than in the United States Navy, Marine Corps, or Coast Guard, or (2) on board vessels of more than twenty tons burden, whether or not documented under the laws of the United States, and whether public or private, which are not foreign vessels, and whose home port is in the United States, may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years, and in the State in which the petition for naturalization is filed for at least six months, if such petition is filed while the petitioner is still in the service on a reenlistment, reappointment, or reshipment, or within six months after an honorable discharge or separation therefrom.

Applicability of designated subsections. Ante, p. 1149.

(b) The provisions of subsections (b), (c), (d), and (e) of section 324 shall apply to petitions for naturalization filed under this section, except that service with good conduct on vessels described in subsection (a) (2) of this section may be proved by certificates from the masters of such vessels.

ALIEN ENEMIES

Naturalization of certain alien enemies.

SEC. 326. (a) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war may be naturalized as a citizen of the United States if such alien's declaration of intention was made not less than two years prior to the beginning of the state of war, or such alien was at the beginning of the state of war entitled to become a citizen of the United States without making a declaration of intention, or his petition for naturalization shall at the beginning of the state of war be pending and the petitioner is otherwise entitled to admission, notwithstanding such petitioner shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject.

Hearing requirements.

(b) An alien embraced within this section shall not have such alien's petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Commissioner to be represented at the hearing, and the Commissioner's objection to such final hearing shall cause the petition to be continued from time to time for so long as the Commissioner may require.

Removal, etc.

(c) Nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Loyalty as basis for exception.

(d) The President of the United States may, in his discretion, upon investigation and report by the Department of Justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thereupon such alien shall have the privilege of applying for naturalization.

PROCEDURAL AND ADMINISTRATIVE PROVISIONS

EXECUTIVE FUNCTIONS

Commissioner in charge of administration.

SEC. 327. (a) The Commissioner, or, in his absence, a Deputy Commissioner, shall have charge of the administration of the naturalization laws, under the immediate direction of the Attorney General, to

whom the Commissioner shall report directly upon all naturalization matters annually and as otherwise required.

Rules and regulations.

(b) The Commissioner, with the approval of the Attorney General, shall make such rules and regulations as may be necessary to carry into effect the provisions of this chapter and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibility to citizenship for the purpose of making appropriate recommendations to the naturalization courts. Such examination shall be limited to inquiry concerning the applicant's residence, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, and other qualifications to become a naturalized citizen as required by law, and shall be uniform throughout the United States.

Examination of petitioners.

Citizenship instruction, etc.

(c) The Commissioner is authorized to promote instruction and training in citizenship responsibilities of applicants for naturalization including the sending of names of candidates for naturalization to the public schools, preparing and distributing citizenship textbooks to such candidates as are receiving instruction in preparation for citizenship within or under the supervision of the public schools, preparing and distributing monthly an immigration and naturalization bulletin and securing the aid of and cooperating with official State and National organizations, including those concerned with vocational education.

Forms and certificates.

(d) The Commissioner shall prescribe and furnish such forms as may be required to give effect to the provisions of this chapter, and only such forms as may be so provided shall be legal. All certificates of naturalization and of citizenship shall be printed on safety paper and shall be consecutively numbered in separate series.

Oaths and depositions.

(e) Members of the Service may be designated by the Commissioner or a Deputy Commissioner to administer oaths and to take depositions without charge in matters relating to the administration of the naturalization and citizenship laws. In cases where there is a likelihood of unusual delay or of hardship, the Commissioner or a Deputy Commissioner may, in his discretion, authorize such depositions to be taken before a postmaster without charge, or before a notary public or other person authorized to administer oaths for general purposes.

Certificates issued by Commissioner, effect.

(f) A certificate of naturalization or of citizenship issued by the Commissioner or a Deputy Commissioner under the authority of this Act shall have the same effect in all courts, tribunals, and public offices of the United States, at home and abroad, of the District of Columbia, and of each State, Territory, and insular possession of the United States, as a certificate of naturalization or of citizenship issued by a court having naturalization jurisdiction.

Admissibility in evidence of certifications, etc.

(g) Certifications and certified copies of all papers, documents, certificates, and records required or authorized to be issued, used, filed, recorded, or kept under any and all provisions of this chapter shall be admitted in evidence equally with the originals in any and all cases and proceedings under this Act and in all cases and proceedings in which the originals thereof might be admissible as evidence.

Photographic studio.

(h) The officers in charge of property owned or leased by the Government are authorized, upon the recommendation of the Attorney General, to provide quarters, without payment of rent, in any building occupied by the Service, for a photographic studio, operated by welfare organizations without profit and solely for the benefit of aliens seeking naturalization. Such studio shall be under the supervision of the Commissioner.

REGISTRY OF ALIENS

Registry of persons arriving in U. S.; data included.

SEC. 328. (a) The Commissioner shall cause to be made, for use in complying with the requirements of this chapter, a registry of each

person arriving in the United States after the effective date of this Act, of the name, age, occupation, personal description (including height, complexion, color of hair and eyes, and fingerprints), the date and place of birth, nationality, the last residence, the intended place of residence in the United States, the date and place of arrival of said person, and the name of vessel or other means of transportation, upon which said person arrived.

Aliens without admission record.

(b) Registry of aliens at ports of entry required by subsection (a) of this section may be made as to any alien not ineligible to citizenship in whose case there is no record of admission for permanent residence, if such alien shall make a satisfactory showing to the Commissioner, in accordance with regulations prescribed by the Commissioner, with the approval of the Attorney General, that such alien—

(1) Entered the United States prior to July 1, 1924;

(2) Has resided in the United States continuously since such entry;

(3) Is a person of good moral character; and

(4) Is not subject to deportation.

Registered persons deemed lawfully admitted.

(c) For the purposes of the immigration laws and naturalization laws an alien, in respect of whom a record of registry has been made as authorized by this section, shall be deemed to have been lawfully admitted to the United States for permanent residence as of the date of such alien's entry.

CERTIFICATE OF ARRIVAL

Issuance.

SEC. 329. (a) The certificate of arrival required by this chapter may be issued upon application to the Commissioner in accordance with regulations prescribed by the Commissioner, with the approval of the Attorney General, upon the making of a record of registry as authorized by section 328 of this Act.

Ante, p. 1151.

Certificate prerequisite to declaration.

(b) No declaration of intention shall be made by any person who arrived in the United States after June 29, 1906, until such person's lawful entry for permanent residence shall have been established, and a certificate showing the date, place, and manner of arrival in the United States shall have been issued. It shall be the duty of the Commissioner or a Deputy Commissioner to cause to be issued such certificate.

PHOTOGRAPHS

Photographs.

SEC. 330. (a) Two photographs of the applicant shall be signed by and furnished by each applicant for a declaration of intention and by each petitioner for naturalization or citizenship. One of such photographs shall be affixed by the clerk of the court to the triplicate declaration of intention issued to the declarant and one to the duplicate declaration of intention required to be forwarded to the Service; and one of such photographs shall be affixed to the original certificate of naturalization issued to the naturalized citizen and one to the duplicate certificate of naturalization required to be forwarded to the Service.

(b) Two photographs of the applicant shall be furnished by each applicant for—

(1) A record of registry;

(2) A certificate of derivative citizenship;

(3) A certificate of naturalization;

(4) A special certificate;

(5) A declaration of intention or a certificate of naturalization or of citizenship, in lieu of one lost, mutilated, or destroyed; and

(6) A new certificate of citizenship in the new name of any naturalized citizen who, subsequent to naturalization, has had such citizen's name changed by order of a court of competent jurisdiction or by marriage.

One such photograph shall be affixed to each such declaration or certificate issued by the Commissioner and one shall be affixed to the copy of such declaration or certificate retained by the Service.

DECLARATION OF INTENTION

SEC. 331. An applicant for naturalization shall make, under oath before, and only in the office of, the clerk of court or such clerk's authorized deputy, regardless of the place of residence in the United States of the applicant, not less than two nor more than seven years at least prior to the applicant's petition for naturalization, and after the applicant has reached the age of eighteen years, a signed declaration of intention to become a citizen of the United States, which declaration shall be set forth in writing, in triplicate, and shall contain substantially the following averments by such applicant: Averments.

(1) My full, true, and correct name is _____ (full, true name, without abbreviation, and any other name which has been used, must appear here).

(2) My present place of residence is _____ (number and street), _____ (city or town), _____ (county), _____ (State).

(3) My occupation is _____.

(4) I am —— years old.

(5) My personal description is as follows: Sex ——; color ——, complexion ——, color of eyes ——, color of hair ——, height —— feet —— inches, weight —— pounds; visible distinctive marks ——; race ——; present nationality _____.

(6) I was born on _____ (month, day, and year), in _____ (city or town), _____ (county, district, province, or state), _____ (country).

(7) I am —— married; the name of my wife or husband is _____; we were married on _____ (month, day, and year), at _____ (city or town), _____ (state or country); he or she was born at _____ (city or town), _____ (county, district, province, or state), _____ (country), on _____ (month, day, and year); and entered the United States at _____ (city or town), (State), on _____ (month, day, and year), for permanent residence in the United States, and now resides at _____ (city or town), _____ (state or country).

(8) I have —— children; and the name, sex, date, and place of birth, and present place of residence of each of said children who is living are as follows: _____.

(9) My place of last foreign residence was _____ (city or town), _____ (county, district, or province), _____ (country).

(10) I emigrated to the United States from _____ (city or town), _____ (country).

(11) My lawful entry for permanent residence in the United States was at _____ (city or town), _____ (State), under the name of _____, on _____ (month, day, and year), on the _____ (name of vessel or other means of conveyance).

(12) I have —— been absent from the United States, having departed therefrom on _____ (dates of departures), from the port or ports of _____, upon the following vessels or other means of conveyance: _____ (names of vessels or conveyances upon departures); and returned to the United States on _____ (dates of return to the United States), at the port or ports of _____, upon the following vessels or other means of conveyance _____ (names of vessels or conveyances upon return).

(13) I have —— heretofore made declaration of intention number ————, on ———— (month, day, and year), at ———— (city or town), ———— (county), ———— (State), in the ———— (name of court).

(14) I am not an anarchist, nor a disbeliever in or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government.

(15) It is my intention in good faith to become a citizen of the United States and to reside permanently therein.

(16) I will, before being admitted to citizenship, renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at the time of admission to citizenship I may be a subject or citizen.

(17) I certify that the photograph affixed to the duplicate and triplicate hereof is a likeness of me and was signed by me.

(18) So help me God.

PETITION FOR NATURALIZATION

Averments.

SEC. 332. (a) An applicant for naturalization shall, not less than two nor more than ten years after such declaration of intention has been made, make and file in the office of the clerk of a naturalization court, in duplicate, a sworn petition in writing, signed by the applicant in the applicant's own handwriting, if physically able to write, and duly verified by witnesses, which petition shall contain substantially the following averments by such applicant.

(1) My full, true, and correct name is ———— (full, true name, without abbreviation, and any other name which has been used, must appear here).

(2) My present place of residence is ———— (number and street). ———— (city or town), ———— (county), ———— (State).

(3) My occupation is ————.

(4) I am —— years old.

(5) My personal description is: Sex ——; color ——, complexion ——, color of eyes ——, color of hair ——, height —— feet —— inches, weight —— pounds; visible distinctive marks ——; race ——; present nationality ——.

(6) I was born on ———— (month, day, and year), in ———— (city or town). ———— (county, district, province, or state). ———— (country).

(7) I am —— married; the name of my wife or husband is ————; we were married on ———— (month, day, and year), at ———— (city or town). ———— (state or country); he or she was born at ———— (city or town), ———— (county, district, province, or state), ———— (country), on ———— (month, day, and year); entered the United States at ———— (city or town), ———— (State), on ———— (month, day, and year), for permanent residence in the United States, and now resides at ———— (city or town), ———— (state or country).

(8) I have —— children; and the name, sex, date, and place of birth, and present place of residence of each of said children who is living are as follows: ————.

(9) My last place of foreign residence was ———— (city or town), ————, (county, district, or province), ————, (country).

(10) I emigrated to the United States from ———— (city or town), ———— (country).

(11) My lawful entry for permanent residence in the United States was at ———— (city or town), ———— (State), under the name of ————, on ———— (month, day, and year), on the ———— (name of vessel or other means of conveyance), as shown by the certificate of my arrival attached to this petition.

(12) I have —— been absent from the United States, having departed therefrom on ———— (dates of departures), from the port or ports of ————, upon the following vessels or other means of conveyance: ———— ———— (names of vessels or conveyances upon departures); and returned to the United States on ———— (dates of return to the United States), at the port or ports of ————, upon the following vessels or other means of conveyance: ———— (names of vessels or conveyances upon return).

(13) I have resided continuously in the United States of America for the term of five years at least immediately preceding the date of this petition, to wit, since ————, and continuously in the State in which this petition is made for the term of six months at least immediately preceding the date of this petition, to wit, since ————.

(14) I declared my intention to become a citizen of the United States on ———— (month, day, and year), in the ———— (name of court) Court of ————, at ———— (city or town), ———— (State).

(15) I have ——— heretofore made petition for naturalization number ————, on ———— (month, day, and year), at ———— (city or town), ———— (county), ———— (State), in the ———— (name of court), and such petition was dismissed or denied by that Court for the following reasons and causes, to wit: ————, and the cause of such dismissal or denial has since been cured or removed.

(16) I am not an anarchist, nor a disbeliever in or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government.

(17) I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

(18) It is my intention in good faith to become a citizen of the United States, and to reside permanently therein.

(19) It is my intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen.

(20) Attached hereto and made a part of this, my petition for naturalization, are my declaration of intention to become a citizen of the United States (if such declaration of intention be required by the naturalization law), a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United States for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavits of the two verifying witnesses required by law.

(21) Wherefore, I, petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to ————.

(22) I, aforesaid petitioner, being duly sworn, depose and say that I have (read) (heard read) this petition and know that the same is true of my own knowledge except as to matters herein stated to be alleged upon information and belief, and that as to those matters I believe it to be true; and that this petition is signed by me with my

full, true, and correct name. So help me God. ——————
(full, true, and correct name of petitioner).

Averments of other material facts.

(b) The applicant's petition for naturalization, in addition to the averments required by subsection (a) of this section, shall include averments of all other facts which may be material to the applicant's naturalization and required to be proved upon the hearing of such petition.

Filing of certificate of arrival, etc., with petition.

(c) At the time of filing the petition for naturalization there shall be filed with the clerk of court a certificate from the Service, if the petitioner arrived in the United States after June 29, 1906, stating the date, place, and manner of petitioner's arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Making and filing of petitions.

(d) Petitions for naturalization may be made and filed during the term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court.

HEARING OF PETITIONS

Preliminary hearings by designated examiners.

SEC. 333. (a) The Commissioner or a Deputy Commissioner shall designate members of the Service to conduct preliminary hearings upon petitions for naturalization to any naturalization court and to make findings and recommendations thereon to such court. For such purposes any such designated examiner is hereby authorized to take testimoney concerning any matter touching or in any way affecting the admissibility of any petitioner for naturalization, to subpena witnesses, and to administer oaths, including the oath of the petitioner to the petition for naturalization and the oath of petitioner's witnesses.

Findings, etc., of examiners.

(b) The findings of any such designated examiner upon any such preliminary hearing shall be submitted to the court at the final hearing upon the petition with a recommendation that the petition be granted, or denied, or continued, with the reasons therefor. Such findings and recommendations shall be accompanied by duplicate lists containing the names of the petitioners, classified according to the character of the recommendations, and signed by the designated examiner.

Approval by judge.

The judge to whom such findings and recommendations are submitted shall, if he approve such recommendations, enter a written order with such exceptions as the judge may deem proper, by subscribing his name to each such list when corrected to conform to his conclusions upon such recommendations. One of such lists shall thereafter be filed permanently of record in such court and the duplicate list shall be sent by the clerk of such court to the Commissioner.

Final hearing in open court.
Final order.

SEC. 334. (a) Every final hearing upon a petition for naturalization shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant, and, except as provided in subsection (b) of this section, the witnesses shall be examined under oath before the court and in the presence of the court.

Waiver of examination.

(b) The requirement of subsection (a) of this section for the examination of the petitioner and witnesses under oath before the court and in the presence of the court shall not apply in any case where a designated examiner has conducted the preliminary hearing authorized by subsection (a) of section 333; except that the court may, in its discretion, and shall, upon demand of the petitioner, require the examination of the petitioner and the witnesses under oath before the court and in the presence of the court.

Discretionary authority of court.

Time restrictions on final hearings, etc.

(c) Except as otherwise specifically provided in this Act, no final hearing shall be held on any petition for naturalization nor shall

any person be naturalized nor shall any certificate of naturalization be issued by any court within thirty days after the filing of the petition for naturalization, nor within sixty days preceding the holding of any general election within the territorial jurisdiction of the naturalization court.

Right of U. S. to cross-examine, etc.

(d) The United States shall have the right to appear before any court in any naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of the petition concerning any matter touching or in any way affecting the petitioner's right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

Change of name.

(e) It shall be lawful at the time and as a part of the naturalization of any person, for the court, in its discretion, upon the prayer of the petitioner included in the petition for naturalization of such person, to make a decree changing the name of said person, and the certificate of naturalization shall be issued in accordance therewith.

OATH OF RENUNCIATION AND ALLEGIANCE

Nature.

SEC. 335. (a) A person who has petitioned for naturalization shall, before being admitted to citizenship, take an oath in open court (1) to support the Constitution of the United States, (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen, (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic, and (4) to bear true faith and allegiance to the same, provided that in the case of the naturalization of a child under the provisions of section 315 or 316 the naturalization court may waive the taking of such oath if in the opinion of the court the child is too young to understand its meaning.

Ante, p. 1146.

Form.

(b) The oath prescribed by subsection (a) of this section which the petitioner for naturalization is required to take, shall be in the following form:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God. In acknowledgment whereof I have hereunto affixed my signature.

Renunciation of title, etc.

(c) In case the person petitioning for naturalization has borne any hereditary title, or has been of any of the orders of nobility in any foreign state, the petitioner shall, in addition to complying with the requirements of subsections (a) and (b) of this section, make under oath in open court, in the court to which the petition for naturalization is made, an express renunciation of such title or order of nobility, and such renunciation shall be recorded in the court as a part of such proceedings.

CERTIFICATE OF NATURALIZATION

Contents.

SEC. 336. A person, admitted to citizenship by a naturalization court in conformity with the provisions of this Act, shall be entitled upon such admission to receive from the clerk of such court a certificate of naturalization, which shall contain substantially the following information: number of petition for naturalization; number of certificate of naturalization; date of naturalization; name, signature, place

of residence, autographed photograph, and personal description of the naturalized person, including age, sex, marital status, and country of former nationality; title, venue, and location of the naturalization court; statement that the court, having found that the petitioner intends to reside permanently in the United States, had complied in all respects with all of the applicable provisions of the naturalization laws of the United States, and was entitled to be admitted a citizen of the United States of America, thereupon ordered that the petitioner be admitted as a citizen of the United States of America; attestation of the clerk of the naturalization court; and seal of the court.

FUNCTIONS AND DUTIES OF CLERKS OF COURTS

Functions and duties of clerks of courts.

SEC. 337. (a) It is hereby made the duty of the clerk of each and every naturalization court to administer the oath in the clerk's office to each applicant for a declaration of intention made before such clerk, and to retain the original of such declaration of intention for the permanent files of the court, to forward the duplicate thereof to the Commissioner within thirty days after the close of the month in which such declaration was filed, and to furnish the declarant with the triplicate thereof.

(b) It shall be the duty of the clerk of each and every naturalization court to forward to the Commissioner a duplicate of each petition for naturalization within thirty days after the close of the month in which such petition was filed, and to forward to the Commissioner certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of persons as may be required from time to time by the Commissioner.

(c) It shall be the duty of the clerk of each and every naturalization court to issue to any person admitted by such court to citizenship a certificate of naturalization and to forward to the Commissioner within thirty days after the close of the month in which such certificate was issued, a duplicate thereof, and to make and keep on file in the clerk's office a stub for each certificate so issued, whereon shall be entered a memorandum of all the essential facts set forth in such certificate, and to forward a duplicate of each such stub to the Commissioner within thirty days after the close of the month in which such certificate was issued.

(d) It shall be the duty of the clerk of each and every naturalization court to report to the Commissioner, within thirty days after the close of the month in which the final hearing and decision of the court was had, the name and number of the petition of each and every person who shall be denied naturalization together with the cause of such denial.

(e) Clerks of courts shall be responsible for all blank certificates of naturalization received by them from time to time from the Commissioner, and shall account to the Commissioner for them whenever required to do so. No certificate of naturalization received by any clerk of court which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the Commissioner.

(f) It shall be the duty of the clerk of each and every naturalization court to cause to be filed in chronological order in separate volumes, indexed, consecutively numbered, and made a part of the records of such court, all declarations of intention and petitions for naturalization.

REVOCATION OF NATURALIZATION

Fraud, etc.

SEC. 338. (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in sub-

section (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

Ante, p. 1153.

Notice.

(b) The party to whom was granted the naturalization alleged to have been fraudulently or illegally procured shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice in which to make answer to the petition of the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

Taking permanent residence abroad.

(c) If a person who shall have been naturalized shall, within five years after such naturalization, return to the country of such person's nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such person to become a permanent citizen of the United States at the time of filing such person's petition for naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancelation of the certificate of naturalization as having been obtained through fraud. The diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those persons within their respective jurisdictions who have been so naturalized and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to revoke and set aside the order admitting to citizenship and to cancel the certificate of naturalization.

Furnishing of certified statements by diplomatic, etc., officers of U. S.

Effect of revocation upon status of wife, etc.

Ante, p. 1158.

(d) The revocation and setting aside of the order admitting any person to citizenship and canceling his certificate of naturalization under the provisions of subsection (a) of section 338 shall not, where such action takes place after the effective date of this Act, result in the loss of citizenship or any right or privilege of citizenship which would have been derived by or available to a wife or minor child of the naturalized person had such naturalization not been revoked, but the citizenship and any such right or privilege of such wife or minor child shall be deemed valid to the extent that it shall not be affected by such revocation: *Provided*, That this subsection shall not apply in any case where the revocation and setting aside of the order was the result of actual fraud.

Proviso.
Actual fraud.

Cancelation of certificate.

(e) When a person shall be convicted under this Act of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

Order of cancelation.

(f) Whenever an order admitting an alien to citizenship shall be revoked and set aside or a certificate of naturalization shall be canceled, or both, as provided in this section, the court in which such judgment or decree is rendered shall make an order canceling such certificate and shall send a certified copy of such order to the Commissioner; in case such certificate was not originally issued by the court making such order, it shall direct the clerk of the naturalization court in which the

Copy to issuing court.

order is revoked and set aside to transmit a copy of such order and judgment to the court out of which such certificate of naturalization shall have been originally issued. It shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of naturalization, if there be any, upon the records and to notify the Commissioner of the entry of such order and of such cancelation. A person holding a certificate of naturalization or citizenship which has been canceled as provided by this section shall upon notice by the court by which the decree of cancelation was made, or by the Commissioner, surrender the same to the Commissioner.

Entry upon records.

Surrender of certificate.

Applicability of provisions.

(g) The provisions of this section shall apply not only to any naturalization granted and to certificates of naturalization and citizenship issued under the provisions of this Act, but to any naturalization heretofore granted by any court, and to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court.

CERTIFICATES OF DERIVATIVE CITIZENSHIP

Issuance, etc.

SEC. 339. A person who claims to have derived United States citizenship through the naturalization of a parent or through the naturalization or citizenship of a spouse may apply to the Commissioner for a certificate of citizenship. Upon proof to the satisfaction of the Commissioner that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this Act of a petitioner for naturalization, such individual shall be furnished by the Commissioner or a Deputy Commissioner with a certificate of citizenship, but only if such individual is at the time within the United States.

REVOCATION OF CERTIFICATES ISSUED BY THE COMMISSIONER OR A DEPUTY COMMISSIONER

Cancelation of certificates, etc.

SEC. 340. The Commissioner is authorized to cancel any certificate of citizenship or any copy of a declaration of intention or certificate of naturalization heretofore or hereafter issued by the Commissioner or a Deputy Commissioner if it shall appear to the Commissioner's satisfaction that such document was illegally or fraudulently obtained from the Commissioner or a Deputy Commissioner; but the person to whom such document has been issued, shall be given at such person's last known place of address, written notice of the intention to cancel such document with the reasons therefor and shall be given at least sixty days in which to show cause why such document should not be canceled. The cancelation of any such document shall affect only the document and not the citizenship status of the person in whose name the document was issued.

Notice.

DOCUMENTS AND COPIES ISSUED BY THE COMMISSIONER OR A DEPUTY COMMISSIONER

Certificates of naturalization.
Ante, p. 1149.

SEC. 341. (a) A person who claims to have been naturalized in the United States under section 323 of this Act may make application to the Commissioner for a certificate of naturalization. Upon proof to the satisfaction of the Commissioner or a Deputy Commissioner that the applicant is a citizen and that he has been naturalized as claimed in the application, such individual shall be furnished a certificate of naturalization by the Commissioner or a Deputy Commissioner, but only if the applicant is at the time within the United States.

Loss, etc., of certificates or declarations.

(b) If any certificate of naturalization or citizenship issued to any citizen, or any declaration of intention furnished to any declarant, is lost, mutilated, or destroyed, the citizen or declarant may make application to the Commissioner for a new certificate or declaration. If the Commissioner or a Deputy Commissioner finds that the certificate or declaration is lost, mutilated, or destroyed, he shall issue to the applicant a new certificate or declaration. If the certificate or declaration has been mutilated, it shall be surrendered to the Commissioner or a Deputy Commissioner before the applicant may receive such new certificate or declaration. If the certificate or declaration has been lost, the applicant or any other person who may come into possession of it is hereby required to surrender it to the Commissioner or a Deputy Commissioner.

Special certificate of naturalization.

(c) The Commissioner or a Deputy Commissioner shall issue for any naturalized citizen, on such citizen's application therefor, a special certificate of naturalization for use by such citizen only for the purpose of obtaining recognition as a citizen of the United States by a foreign state. Such certificate when issued shall be furnished to the Secretary of State for transmission to the proper authority in such foreign state.

New certificate showing change of name.

(d) If the name of any naturalized citizen has, subsequent to naturalization, been changed by order of any court of competent jurisdiction, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the Commissioner or a Deputy Commissioner finds the name of the applicant to have been changed as claimed, the Commissioner or a Deputy Commissioner shall issue to the applicant a new certificate and shall notify the naturalization court of such action.

Certifications of records, etc.

(e) The Commissioner or a Deputy Commissioner is authorized to make and issue, without fee, certifications of any part of the naturalization records of any court, or of any certificate of naturalization or citizenship, for use in complying with any statute, State or Federal, or in any judicial proceeding. No such certification shall be made by any clerk of court except upon order of the court.

FISCAL PROVISIONS

Court fees.

SEC. 342. (a) The clerk of each and every naturalization court shall charge, collect, and account for the following fees:

(1) For receiving and filing a declaration of intention, and issuing a duplicate and triplicate thereof, $2.50.

(2) For making, filing, and docketing a petition for naturalization, $5, including the final hearing on such petition, if such hearing be held, and a certificate of naturalization, if the issuance of such certificate is authorized by the naturalization court.

Commissioner's fees.

(b) The Commissioner shall charge, collect, and account for the following fees:

(1) For application for record of registry, $18.

(2) For the issuance of each certificate of arrival, $2.50.

(3) For application for a declaration of intention in lieu of a declaration alleged to have been lost, mutilated, or destroyed, $1.

(4) For application for a certificate of naturalization in lieu of a certificate alleged to have been lost, mutilated, or destroyed, $1.

(5) For application for a certificate of derivative citizenship, $5.

(6) For application for the issuance of a special certificate of citizenship to obtain recognition, $5.

(7) For application for a certificate of naturalization under section 323, $1.

(8) For application for a certificate of citizenship in changed name, $5.

(9) Reasonable fees, with the approval of the Attorney General, in cases where such fees have not been established by law, to cover the cost of furnishing, to other than officials or agencies of the Federal Government, copies, whether certified or uncertified, of any part of the records, or information from the records, of the Service. Such fees shall not exceed a maximum of 25 cents per folio, with a minimum fee of 50 cents for any one such service, in addition to a fee of $1 for any official certification furnished under seal.

Accounting. 54 Stat. p. 1140.

(c) The clerk of any naturalization court specified in subsection (a) of section 301 (except the courts specified in subsection (d) of this section), shall account for and pay over to the Commissioner one-half of all fees up to the sum of $6,000, and all fees in excess of $6,000, collected by any such clerk in naturalization proceedings in any fiscal year.

(d) The clerk of any United States district court (except in Alaska) and the clerk of the District Court of the United States for the District of Columbia shall account for and pay over to the Commissioner all fees collected by any such clerks in naturalization proceedings.

(e) The accounting required by subsections (c) and (d) of this section shall be made and the fees paid over to the Commissioner by such respective clerks in their quarterly accounts which they are hereby required to render to the Commissioner within thirty days from the close of each quarter of each and every fiscal year, in accordance with regulations prescribed by the Commissioner.

Pay of additional clerical force.

(f) The clerks of the various naturalization courts shall pay all additional clerical force that may be required in performing the duties imposed by this Act upon clerks of courts from fees retained under the provisions of this section by such clerks in naturalization proceedings.

Deposit of fees.

(g) All fees collected by the Commissioner and all fees paid over to the Commissioner by clerks of naturalization courts under the provisions of this Act, shall be deposited by the Commissioner in the Treasury of the United States.

Limitation on counsel's fees; exception.

(h) In all naturalization proceedings in which an alien applying for a certificate of naturalization or of citizenship is represented by counsel, there is hereby established a limit of $25 for counsel's fees, except where legal action before a court requires extended legal service when the court may approve a reasonable fee in excess of $25.

Wartime fee restrictions.

(i) During the time when the United States is at war no clerk of a United States court shall charge or collect a naturalization fee from an alien in the military or naval service of the United States for filing a petition for naturalization or issuing a certificate of naturalization upon admission to citizenship, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A report of all transactions under this subsection shall be made to the Commissioner as in the case of other reports required of clerks of courts by this Act.

Report to Commissioner.

Additional fees, etc.

(j) In addition to the other fees required by this Act, the petitioner for naturalization shall, upon the filing of a petition for naturalization, deposit with and pay to the clerk of the naturalization court a sum of money sufficient to cover the expenses of subpenaing and paying the legal fees of any witnesses for whom such petitioner may request a subpena, and upon the final discharge of such witnesses, they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner.

MAIL

Transmittal free of postage.

SEC. 343. All mail matter of whatever class, relating to naturalization, including duplicate papers required by law or regulation to be sent to the Service by clerks of courts addressed to the Department of Justice or the Service, or any official thereof, and endorsed "Official Business", shall be transmitted free of postage and by registered mail if necessary, and so marked.

TEXTBOOKS

Citizenship textbook.
Ante, p. 1151.

SEC. 344. Authorization is hereby granted for the publication and distribution of the citizenship textbook described in subsection (c) of section 327, and for the reimbursement of the printing and binding appropriation of the Department of Justice upon the records of the Treasury Department from the naturalization fees deposited in the Treasury through the Service for the cost of such publication and distribution, such reimbursement to be made upon statements by the Commissioner of books so published and distributed.

COMPILATION OF NATURALIZATION STATISTICS

Preparation, etc.

SEC. 345. The Commissioner is authorized and directed to prepare from the records in the custody of the Service a report upon those heretofore seeking citizenship to show by nationalities their relation to the numbers of aliens annually arriving and to the prevailing census populations of the foreign born, their economic, vocational, and other classification, in statistical form, with analytical comment thereon, and to prepare such report annually hereafter. Payment for the equipment used in preparing such compilation shall be made from the appropriation, "Salaries and expenses, Immigration and Naturalization Service".

PENAL PROVISIONS

Penal provisions.
Felonies.

SEC. 346. (a) It is hereby made a felony for any alien or other person, whether an applicant for naturalization or citizenship, or otherwise, and whether an employee of the Government of the United States or not—

(1) Knowingly to make a false statement under oath, either orally or in writing, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization or citizenship.

(2) Knowingly to procure or attempt to procure—

a. The naturalization of any such person, contrary to the provisions of any law; or

b. Documentary or other evidence of naturalization or of citizenship of any such person, contrary to the provisions of any law.

(3) To procure or attempt to procure any documentary or other evidence of naturalization or of citizenship of any person knowing or having reason to believe that such person is not entitled thereto.

(4) To encourage, advise, aid, or assist any person—

a. Not then entitled or qualified under this Act to apply for a declaration of intention, to apply for such declaration of intention, with knowledge or having reason to believe that such person was not then so entitled or qualified; or

b. Not then entitled or qualified under this Act to secure a declaration of intention, to obtain such declaration of intention, with knowledge that such person was not then so entitled or qualified; or

c. Not then entitled or qualified under this Act to apply for natu-

Felonies—Cont.

ralization or citizenship, to apply for such naturalization or citizenship, with knowledge that such person was not then so entitled or qualified; or

d. Not then entitled or qualified under this Act to obtain naturalization or citizenship, to obtain such naturalization or citizenship, with knowledge that such person was not then so entitled or qualified; or

e. Not then entitled or qualified under this Act to apply for documentary or other evidence of naturalization or of citizenship, to apply for such documentary or other evidence of naturalization or of citizenship, with knowledge that such person was not then so entitled or qualified; or

f. Not then entitled or qualified under this Act to obtain documentary or other evidence of naturalization or of citizenship, to obtain such documentary or other evidence of naturalization or of citizenship, with knowledge that such person was not then so entitled or qualified.

(5) To encourage, aid, advise, or assist any person not entitled thereto to obtain, accept, or receive any certificate of arrival, declaration of intention, certificate of naturalization, or certificate of citizenship, or other documentary evidence of naturalization or of citizenship—

a. Knowing the same to have been procured by fraud; or

b. Knowing the same to have been procured by the use or means of any false name or false statement given or made with the intent to procure the issuance of such certificate of arrival, declaration of intention, certificate of naturalization, or certificate of citizenship, or other documentary evidence of naturalization or of citizenship; or

c. Knowing the same to have been fraudulently altered in any manner.

(6) Knowingly, in any naturalization or citizenship proceeding, whether as the applicant, declarant, petitioner, witness, or otherwise in such proceeding—

a. To personate another person;

b. To appear falsely in the name of a deceased person, or in an assumed or fictitious name.

(7) Knowingly, contrary to the provisions of this Act—

a. To issue a certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship; or

b. To assist in or be a party to the issuance of a certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship.

(8) Knowingly to possess without lawful authority or lawful excuse, and with intent unlawfully to use the same, any false, forged, antedated, or counterfeited certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, purporting to have been issued under any law of the United States relating to naturalization or citizenship, knowing such certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship to be false, forged, antedated, or counterfeited.

(9) Falsely to make, forge, or counterfeit any oath, notice, affidavit, certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, or any order, record, signature, or other instrument, paper, or proceeding, required or authorized by any law relating to naturalization or citizenship.

Falsely—Cont.

(10) To cause or procure to be falsely made, forged, or counterfeited, any oath, notice, affidavit, certificate, certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, or any order, record, signature, or other instrument, paper, or proceeding, required or authorized by any law relating to naturalization or citizenship.

(11) To aid or assist in falsely making, forging, or counterfeiting, any oath, notice, affidavit, certificate, certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, or any order, record, signature, or other instrument, paper, or proceeding, required or authorized by any law relating to naturalization or citizenship.

(12) To utter, sell, dispose of, or use as true or genuine, for any unlawful purpose, any false, forged, antedated, or counterfeited oath, notice, affidavit, certificate, certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, or any order, record, signature, or other instrument, paper, or proceeding, required or authorized by any law relating to naturalization or citizenship.

(13) To sell, or dispose of unlawfully, a declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship.

(14) Knowingly to use in any manner for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise unlawfully, any order, certificate, certificate of naturalization, certificate of citizenship, judgment, decree, or exemplification, showing any person to be naturalized or admitted to be a citizen, whether heretofore or hereafter issued or made, which has been unlawfully issued or made.

(15) Knowingly and unlawfully to use, or attempt to use, any order, certificate, certificate of naturalization, certificate of citizenship, judgment, decree, or exemplification, showing any person to be naturalized or admitted to be a citizen, whether heretofore or hereafter issued or made, which has been issued to or in the name of any other person or in a fictitious name, or in the name of a deceased person.

(16) To use or attempt to use any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or other documentary evidence of naturalization or of citizenship heretofore or which may hereafter be issued or granted, knowing the same to be forged, counterfeited, or antedated, or to have been procured by fraud or by false evidence, or without appearance or hearing of the applicant in court where such appearance and hearing are required, or otherwise unlawfully obtained.

(17) To aid, assist, or participate in the use of any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or other documentary evidence of naturalization or of citizenship heretofore or which may hereafter be issued or granted, knowing the same to be forged, counterfeited, or antedated, or to have been procured by fraud or by false evidence, or without appearance or hearing of the applicant in court where such appearance and hearing are required, or otherwise unlawfully obtained.

(18) Knowingly to falsely represent himself to be a citizen of the United States without having been naturalized or admitted to citizenship, or without otherwise being a citizen of the United States.

(19) Knowingly, with the intent to avoid any duty or liability imposed or required by law, to deny that he has been naturalized or

Felonies—Cont.

admitted to be a citizen, after having been so naturalized or admitted.

(20) To engrave, without lawful authority, any plate in the likeness of any plate designed for the printing of a declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship.

(21) To cause or procure to be engraved, without lawful authority, any plate in the likeness of any plate designed for the printing of a declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship.

(22) To assist in engraving, without lawful authority, any plate in the likeness of any plate designed for the printing of a declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship.

(23) To sell any plate in the likeness of any plate designed for the printing of a declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, except by direction of the Commissioner or other proper officer of the United States.

(24) To bring into the United States from any foreign place any plate in the likeness of any plate designed for the printing of a declaration of intention, certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, except by direction of the Commissioner or other proper officer of the United States.

(25) To have in the control, custody, or possession of any such alien or other person, any metallic plate engraved after the similitude of any plate from which any declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, has been or is to be printed, with intent to use or to suffer such plate to be used in forging or counterfeiting any such declaration of intention, or certificate of naturalization, or certificate of citizenship, or other documentary evidence or any part thereof.

(26) To bring into the United States from any foreign place, except by direction of the Commissioner or other proper officer of the United States, any declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, printed from any metallic plate engraved after the similitude of any plate from which any declaration of intention, certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship has been or is to be printed.

(27) To have in his possession, without lawful authority, any blank certificate of arrival, blank declaration of intention, or blank certificate of naturalization or of citizenship, provided by the Service, with the intent unlawfully to use the same.

(28) To have in his possession a distinctive paper which has been adopted by the proper officer or agency of the United States for the printing or engraving of any declaration of intention, or certificate of naturalization or of citizenship, with intent unlawfully to use the same.

(29) To print, photograph, make, or execute, or in any manner cause to be printed, photographed, made, or executed, without lawful authority, any print or impression in the likeness of any certificate of arrival, declaration of intention, or certificate of naturalization or of citizenship, or any part thereof.

(30) Knowingly to procure or attempt to procure an alien or other person to violate any of the provisions of this Act.

Felonies—Cont.

(31) Failing, after at least sixty days' notice, by the appropriate court or the Commissioner or a Deputy Commissioner, to surrender a certificate of naturalization or citizenship which has been canceled, in accordance with the provisions of this Act, such person having such certificate in his possession or under his control.

(32) Knowingly to certify that an applicant, declarant, petitioner, affiant, witness, deponent, or other person named in an application, declaration, petition, affidavit, deposition, or certificate of naturalization, or certificate of citizenship, or other paper or writing required or authorized to be executed or used under the provisions of this Act, personally appeared before the person making such certification and was sworn thereto or acknowledged the execution thereof, or signed the same, when in fact such applicant, declarant, petitioner, affiant, witness, deponent, or other person, did not personally appear before the person making such certification, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof.

(33) Knowingly to demand, charge, solicit, collect, or receive, or agree to charge, solicit, collect, or receive any other or additional fees or moneys in naturalization or citizenship or other proceedings under this Act than the fees and moneys specified in such Act.

(34) Willfully to neglect to render true accounts of moneys received by any clerk of a naturalization court or such clerk's assistant or any other person under this Act or willfully to neglect to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, which neglect shall constitute embezzlement of the public moneys.

Applicability to certain documents, etc.

(b) The provisions of this section shall apply to copies and duplicates of certificates of arrival, of declarations of intention, of certificates of naturalization, of certificates of citizenship, and of other documents required or authorized by the naturalization laws and citizenship laws as well as to the originals of such certificates of arrival, declarations of intention, certificates of naturalization, certificates of citizenship, and other documents, whether issued by any court or by the Commissioner or a Deputy Commissioner.

Applicability to certain court proceedings.
Ante, p. 1140.

(c) The provisions of this section shall apply to all proceedings had or taken or attempted to be had or taken, before any court specified in subsection (a) of section 301, or any court, in which proceedings for naturalization may have been or may be commenced or attempted to be commenced, and whether or not such court at the time such proceedings were had or taken was vested by law with jurisdiction in naturalization proceedings.

Penalty.

(d) Any person violating any provision of subsection (a) of this section shall be fined not more than $5,000, or imprisoned not more than five years, or both.

Noncompliance with subpenas.
Ante, p. 1144.

(e) Any person who has been subpenaed under the provisions of subsection (d) of section 309 to appear on the final hearing of a petition for naturalization, and who shall neglect or refuse to so appear and to testify, if in the power of such person to do so, shall be subject to the penalties prescribed by subsection (d) of this section.

Avoidance of postage, etc., charges; penalty.
Ante, p. 1143.

(f) If any person shall use the endorsement "Official Business" authorized by section 343 to avoid payment of postage or registry fee on a private letter, package, or other matter in the mail, such person shall be guilty of a misdemeanor and subject to a fine of $300, to be prosecuted in any court of competent jurisdiction.

Time limitation for finding indictment, etc.

(g) No person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act unless the indictment is found or the information is filed within five years next after the commission of such crime.

Applicability of existing laws to prior crimes.

(h) For the purpose of the prosecution of all crimes and offenses against the naturalization or citizenship laws of the United States which may have been committed prior to the date when this Act shall go into effect, the existing naturalization and citizenship laws shall remain in full force and effect.

Testimony of officers, etc.

(i) It shall be lawful and admissible as evidence in any proceedings founded under this Act, or any of the penal or criminal provisions of the immigration, naturalization or citizenship laws, for any officer or employee of the United States to render testimony as to any statement voluntarily made to such officer or employee in the course of the performance of the official duties of such officer or employee by any defendant at the time of or subsequent to the alleged commission of any crime or offense referred to in this section which may tend to show that such defendant did not or could not have had knowledge of any matter concerning which such defendant is shown to have made affidavit, or oath, or to have been a witness pursuant to such law or laws.

Noncompliance by clerks of court; penalty.
Ante, p. 1158.

(j) In case any clerk of court shall refuse or neglect to comply with any of the provisions of section 337 (a), (b), (c), or (d), such clerk of court shall forfeit and pay to the United States the sum of $25 in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

Failure to account for certificates.
Ante, p. 1158.

(k) If any clerk of court shall fail to return to the Service or properly account for any certificate of naturalization furnished by the Service as provided in subsection (e) of section 337, such clerk of court shall be liable to the United States in the sum of $50, to be recovered in an action of debt, for each and every such certificate not properly accounted for or returned.

Provisions applicable to record of registry.
Ante, p. 1151.

(l) The provisions of subsections (a), (b), (d), (g), (h), and (i) of this section shall apply in respect of the application for and the record of registry authorized by section 328, in the same manner and to the same extent, including penalties, as they apply in any naturalization or citizenship proceeding or any other proceeding under section 346.
Ante, p. 1163.

SAVING CLAUSES

Saving clauses.
Ante, p. 1140; *post*, p. 1171.

SEC. 347. (a) Nothing contained in either chapter III or in chapter V of this Act, unless otherwise provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization or of citizenship, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any act, thing, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect.

Hearing of pending petition.

(b) Any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined within two years thereafter in accordance with the requirements of law in effect when such petition was filed.

CHAPTER IV—LOSS OF NATIONALITY

SEC. 401. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

Naturalization in foreign state.

(a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal

custody of such person: *Provided, however*, That nationality shall not be lost as the result of the naturalization of a parent unless and until the child shall have attained the age of twenty-three years without acquiring permanent residence in the United States: *Provided further*, That a person who has acquired foreign nationality through the naturalization of his parent or parents, and who at the same time is a citizen of the United States, shall, if abroad and he has not heretofore expatriated himself as an American citizen by his own voluntary act, be permitted within two years from the effective date of his Act to return to the United States and take up permanent residence therein, and it shall be thereafter deemed that he has elected to be an American citizen. Failure on the part of such person to so return and take up permanent residence in the United States during such period shall be deemed to be a determination on the part of such person to discontinue his status as an American citizen, and such person shall be forever estopped by such failure from thereafter claiming such American citizenship; or

Proviso.
Effect upon child.

Election of American citizenship.

(b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; or

Oath of allegiance to foreign state.

(c) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or

Service in foreign armed forces.

(d) Accepting, or performing the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof for which only nationals of such state are eligible; or

Employment, etc., by foreign government.

(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

Voting in foreign political elections, etc.

(f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

Formal renunciation of nationality.

(g) Deserting the military or naval service of the United States in time of war, provided he is convicted thereof by a court martial; or

Deserting U. S. military or naval service.

(h) Committing any act of treason against, or attempting by force to overthrow or bearing arms against the United States, provided he is convicted thereof by a court martial or by a court of competent jurisdiction.

Committing treason, etc.

SEC. 402. A national of the United States who was born in the United States or who was born in any place outside of the jurisdiction of the United States of a parent who was born in the United States, shall be presumed to have expatriated himself under subsection (c) or (d) of section 401, when he shall remain for six months or longer within any foreign state of which he or either of his parents shall have been a national according to the laws of such foreign state, or within any place under control of such foreign state, and such presumption shall exist until overcome whether or not the individual has returned to the United States. Such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, or to an immigration officer of the United States, under such rules and regulations as the Department of State and the Department of Justice jointly prescribe. However, no such presumption shall arise with respect to any officer or employee of the United States while serving abroad as such officer or employee, nor to any accompanying member of his family.

Presumption of expatriation.

Overcoming presumption.

Persons excepted.

SEC. 403. (a) Except as provided in subsections (g) and (h) of section 401, no national can expatriate himself, or be expatriated, under this section while within the United States or any of its outlying possessions, but expatriation shall result from the performance

Limitation on expatriation within U. S.

within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section if and when the national thereafter takes up a residence abroad.

Expatriation of certain minors, restriction.

(b) No national under eighteen years of age can expatriate himself under subsections (b) to (g), inclusive, of section 401.

Expatriation of naturalized nationals through foreign residence.

SEC. 404. A person who has become a national by naturalization shall lose his nationality by:

(a) Residing for at least two years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, if he acquires through such residence the nationality of such foreign state by operation of the law thereof; or

(b) Residing continuously for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, except as provided in section 406 hereof.

(c) Residing continuously for five years in any other foreign state, except as provided in section 406 hereof.

Persons in U. S. employ abroad, etc.

SEC. 405. Section 404 shall have no application to a person:

(a) Who resides abroad in the employment and under the orders of the Government of the United States;

(b) Who is receiving compensation from the Government of the United States and residing abroad on account of disability incurred in its service.

No expatriation by residence abroad in designated cases.

SEC. 406. Subsections (b) and (c) of section 404 shall have no application to a person:

(a) Who shall have resided in the United States not less than twenty-five years subsequent to his naturalization and shall have attained the age of sixty-five years when the foreign residence is established;

(b) Who is residing abroad upon the date of the approval of this Act, or who is thereafter sent abroad, and resides abroad temporarily solely or principally to represent a bona fide American educational, scientific, philanthropic, religious, commercial, financial, or business organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation;

(c) Who is residing abroad on account of ill health;

(d) Who is residing abroad for the purpose of pursuing studies of a specialized character or attending an institution of learning of a grade above that of a preparatory school, provided that such residence does not exceed five years;

(e) Who is the wife, husband, or child under twenty-one years of age of, and is residing abroad for the purpose of being with, an American citizen spouse or parent who is residing abroad for one of the objects or causes specified in section 405 or subsections (a), (b), (c), or (d) hereof;

(f) Who was born in the United States or one of its outlying possessions, who originally had American nationality, and who, after having lost such nationality through marriage to an alien, reacquired it.

Effect of parent's loss of nationality upon minors residing abroad.

SEC. 407. A person having American nationality, who is a minor and is residing in a foreign state with or under the legal custody of a parent who loses American nationality under section 404 of this Act, shall at the same time lose his American nationality if such minor has or acquires the nationality of such foreign state: *Provided*, That, in such case, American nationality shall not be lost as the result of loss of American nationality by the parent unless and until the

Proviso. Condition.

child attains the age of twenty-three years without having acquired permanent residence in the United States.

Loss dependent on own acts, etc.

SEC. 408. The loss of nationality under this Act shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this Act.

Time restriction on loss of nationality.
Ante, p. 1170.

SEC. 409. Nationality shall not be lost under the provisions of section 404 or 407 of this Act until the expiration of one year following the date of the approval of this Act: *Provided, however*, That a naturalized person who shall have become subject to the presumption that he has ceased to be an American citizen as provided for in the second paragraph of section 2 of the Act of March 2, 1907 (34 Stat. 1228), and who shall not have overcome it under the rules in effect immediately preceding the date of the approval of this Act, shall continue to be subject to such presumption for the period of one year following the date of the approval of this Act unless it is overcome during such period.

Proviso.
Persons subject to designated presumption.

8 U. S. C. § 17.

Noncontravention of treaties, etc.

SEC. 410. Nothing in this Act shall be applied in contravention of the provisions of any treaty or convention to which the United States is a party upon the date of the approval of this Act.

CHAPTER V—MISCELLANEOUS

Certificates of loss of nationality.
Ante, p. 1161.

SEC. 501. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his American nationality under any provision of chapter IV of this Act, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations to be prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Department of Justice, for its information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

Certificates of nationality.

SEC. 502. The Secretary of State is hereby authorized to issue, in his discretion and in accordance with rules and regulations prescribed by him, a certificate of nationality for any person not a naturalized citizen of the United States who presents satisfactory evidence that he is an American national and that such certificate is needed for use in judicial or administrative proceedings of a foreign state. Such certificate shall be solely for use in the case for which it was issued and shall be transmitted by the Secretary of State through appropriate official channels to the judicial or administrative officers of the foreign state in which it is to be used.

Use.

Court proceedings for declaration of U. S. nationality.

SEC. 503. If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any Department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person, regardless of whether he is within the United States or abroad, may institute an action against the head of such Department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such person claims a permanent residence for a judgment declaring him to be a national of the United States. If such person is outside the United States and shall have instituted such an action in court, he may, upon submission of a sworn application showing that the claim of nationality presented in such action is made in good faith and has a substantial basis, obtain from a diplomatic or consular officer of the United States in the foreign country in which he is residing a certificate of identity

Certificates of identity for U. S. entry.

stating that his nationality status is pending before the court, and may be admitted to the United States with such certificate upon the condition that he shall be subject to deportation in case it shall be decided by the court that he is not a national of the United States. Such certificate of identity shall not be denied solely on the ground that such person has lost a status previously had or acquired as a national of the United States; and from any denial of an application for such certificate the applicant shall be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing the reasons for his decision. The Secretary of State, with approval of the Attorney General, shall prescribe rules and regulations for the issuance of certificates of identity as above provided.

Appeal.

Rules, etc.

Repeal.

SEC. 504. The following Acts or parts of Acts are hereby repealed:

Section 1992, Revised Statutes (U. S. C., title 8, sec. 1);

Section 1993, Revised Statutes, as amended by section 1, Act of May 24, 1934 (48 Stat. 797; U. S. C., title 8, sec. 6);

Section 2166, Revised Statutes, as limited by section 2, Act of May 9, 1918 (40 Stat. 546-547; U. S. C., title 8, sec. 395);

Section 2172, Revised Statutes (U. S. C., title 8, sec. 7);

Section 100, Act of April 30, 1900 (31 Stat. 161; U. S. C., title 8, sec. 385 (first paragraph));

Act of June 29, 1906, chapter 3592 (34 Stat. 596) (except subdivisions 6 and 8 of section 4 and sections 10, 16, 17, 19, and 26, thereof), as added to, supplemented, or amended by section 1, Act of June 25, 1910 (36 Stat. 829); section 1, and second paragraph of section 3, Act of May 9, 1918 (40 Stat. 542-546, 547, 548); Act of June 8, 1926 (44 Stat. 709); section 4, Act of February 25, 1927 (44 Stat. 1235); Act of March 2, 1929 (45 Stat. 1512) (except sections 6 (e), and section 7 (b), thereof); section 1, Act of March 4, 1929 (45 Stat. 1545); Act of June 21, 1930 (46 Stat. 791); sections 1, 2, 3, and 4 (a), Act of March 3, 1931 (46 Stat. 1511); Act of May 25, 1932 (47 Stat. 165) (except sections 1, 5, and 7, thereof); and Act of April 19, 1934 (48 Stat. 597); United States Code, title 8, sections 18, 106, 106a, 106b, 106c, 351, 352, 353, 354, 356, 357, 358, 358a, 360, 364, 365, 372, 373, 377, 377c, 378, 379, 380, 380b, 381, 382, 384, 386, 387, 388, 389, 391, 392, 393, 394, 396, 397, 398, 399, 399a, 399b (a), 399b (b), 399b (c), 399b (d), 399c (a), 399c (b), 399c (c), 399d, 400, 401, 402, 403, 404, 405, 408, 409, 410, 411, 412, 413, 414, and 415;

8 U. S. C., Supp. V, §§ 18a, 357, 379-382, 388, 399b.

Sections 2, 5, 6, and 7, Act of March 2, 1907 (34 Stat. 1228, 1229), as amended by section 2, Act of May 24, 1934 (48 Stat. 797; U. S. C., title 8, secs. 8, 16, and 17);

Sections 74 to 81, inclusive, Act of March 4, 1909 (35 Stat. 1102-1103; U. S. C., title 18, secs. 135 and 137 to 143, inclusive);

That portion of section 1, Act of August 22, 1912 (37 Stat. 356; U. S. C., title 8, sec. 11), reading as follows:

"SEC. 1998. That every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six of the Revised Statutes of the United States: *Provided*, That the provisions of this section and said section nineteen hundred and ninety-six shall not apply to any person hereafter deserting the military or naval services of the United States in time of peace: * * *";

So much of section 1, Act of October 6, 1917, chapter 79 (40 Stat. 376; U. S. C., title 39, sec. 324), as reads as follows: "*Provided further*, That all mail matter, of whatever class, relating to naturalization, including duplicate papers required by law or regulation to be sent to the Bureau of Naturalization by clerks of State or Federal courts, addressed to the Department of Justice, or the Bureau of Naturalization, or to any official thereof, and indorsed 'Official Business', shall be transmitted free of postage, and by registered mail if necessary, and so marked: *Provided further*, That if any person shall make use of such indorsement to avoid payment of postage or registry fee on his or her private letter, package, or other matter in the mail, the person so offending shall be guilty of a misdemeanor and subject to a fine of $300, to be prosecuted in any court of competent jurisdiction.";

Section 1, last proviso of section 2, and second paragraph of section 3, Act of May 9, 1918 (40 Stat. 542–546, 547, 548), as amended by section 6 (c), (d), Act of March 2, 1929 (45 Stat. 1514); Act of June 21, 1930 (46 Stat. 791); and sections 2 (a), 3, and 10, Act of May 25, 1932 (47 Stat. 165–166; U. S. C., title 8, secs. 18, 354, 377, 378, 384, 387, 388, 389, 391, 392, 393, 394, 395, 403, and 405); 8 U. S. C., Supp. V, § 88.

Proviso to second paragraph of section 4, chapter XII, Act of July 9, 1918, chapter 143 (40 Stat. 885; U. S. C., title 8, sec. 366);

Second proviso to section 1, Act of August 31, 1918, chapter 166 (40 Stat. 955);

Act of November 6, 1919, chapter 95 (41 Stat. 350; U. S. C., title 8, sec. 3);

Sections 1, 2, 3, and 4, Act of September 22, 1922 (42 Stat. 1021–1022); as amended by sections 1 and 2, Act of July 3, 1930 (46 Stat. 854); section 4, Act of March 3, 1931 (46 Stat. 1511–1512); and section 4, Act of May 24, 1934 (48 Stat. 797; U. S. C., title 8, secs. 367, 368, 368a, 369, and 369a); 8 U. S. C., Supp. V, § 368.

Act of June 8, 1926 (44 Stat. 709; U. S. C., title 8, sec. 399a);

Section 4, Act of February 25, 1927 (44 Stat. 1235; U. S. C., title 8, sec. 358a);

Act of March 2, 1929, chapter 536 (45 Stat. 1512–1516) (except sec. 6 (e), and sec. 7 (b)); as amended or added to by sections 4, 5, and 6, Act of May 25, 1932 (47 Stat. 165–166); and sections 1, 2, 3, 4, and 6, Act of April 19, 1934 (48 Stat. 597–598; U. S. C., title 8, secs. 106a, 106b, 106c, 356, 377b, 377c, 379, 380a, 380b, 382, 388, 399b (a), 399b (b), 399b (c), 399b (d), 399c (a), 399c (b), 399c (c), 399d, 399e, and 402); 8 U. S. C., Supp. V, §§ 106a, 379, 382, 388, 399b.

Section 1, Act of March 4, 1929 (45 Stat. 1545; U. S. C., title 8, sec. 373); 8 U. S. C., Supp. V, § 373.

Act of June 21, 1930 (46 Stat. 791; U. S. C., title 8, sec. 18);

Section 2, Act of July 3, 1930 (46 Stat. 854; U. S. C., title 8, sec. 369);

Act of February 11, 1931 (46 Stat. 1087; U. S. C., title 8, sec. 366a);

Act of March 3, 1931 (46 Stat. 1511–1512) (except section 4 (b), thereof) (U. S. C., title 8, secs. 9, 372a, 396, and 397);

Sections 2, 3, 4, 6, 8, 9, and 10, Act of May 25, 1932 (47 Stat. 165–166); as amended by section 2, Act of April 19, 1934 (48 Stat. 597; U. S. C., title 8, secs. 356 (a), 377, 377b, 384, 388, 399b (b), and 399b (c)); 8 U. S. C., Supp. V, § 388.

Act of April 19, 1934 (48 Stat. 597–598; U. S. C., title 8, secs. 106a (b), 380a, 399b (a), 399b (b), 399b (c), 399c (a), 399f, and 402); 8 U. S. C., Supp. V, §§ 106a, 380b.

Sections 1, 2, 3, and 4, Act of May 24, 1934 (48 Stat. 797; U. S. C., title 8, secs. 6, 8, 17a, and 368); and 8 U. S. C., Supp. V, § 368.

Second proviso to Act of June 27, 1934 (48 Stat. 1245, ch. 845; U. S. C., title 48, sec. 733b);

8 U. S. C., Supp. V, §§ 203b–203d.
Act of June 24, 1935, chapter 288 (49 Stat. 395);
8 U. S. C., Supp. V, §§ 203–203c.
Act of June 24, 1935, chapter 290 (49 Stat. 397);
8 U. S. C., Supp. V, §§ 3a–3c.
Act of June 25, 1936, chapter 811 (49 Stat. 1925–1926);
8 U. S. C., Supp. V, § 3a.
Act of June 25, 1936, chapter 801 (49 Stat. 1917);
8 U. S. C., Supp. V, § 2a.
Section 3, Act of July 30, 1937 (50 Stat. 548);
8 U. S. C., Supp. V, § 2aa.
Act of August 4, 1937, chapter 563 (50 Stat. 558);
8 U. S. C., Supp. V, §§ 5d, 5e.
Act of May 16, 1938, chapter 225 (52 Stat. 377);
8 U. S. C., Supp. V, § 5a-1
Joint resolution of June 29, 1938 (52 Stat. 1247);
8 U. S. C., Supp. V, § 382.
Act of June 20, 1939, chapter 224 (53 Stat. 843–844);
8 U. S. C., Supp. V, §§ 373, 379, 381.
Act of August 9, 1939, chapter 610 (53 Stat. 1273);

And any other Acts or parts of Acts in conflict with the provisions of this Act, except for the purposes of section 346 of this Act.

Prior nationality status.

The repeal herein provided shall not terminate nationality heretofore lawfully acquired, nor restore nationality heretofore lost under any law of the United States or any treaty to which the United States may have been a party.

Separability clause.

SEC. 505. If any provision of this Act shall for any reason be declared by any court of competent jurisdiction to be invalid, such declaration shall not invalidate the remainder of this Act.

TITLE II

Effective date.

SEC. 601. This Act shall take effect from and after ninety days from the date of its approval.

Approved, October 14, 1940.

[CHAPTER 877]

October 14, 1940
[H. R. 10265]
[Public, No. 854]

AN ACT

To amend the Act of June 23, 1938 (52 Stat. 944).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of June 23, 1938 (52 Stat. 944), is hereby amended as follows:

Navy.
Promotion, etc., of officers.

Section 5, strike out subsection (a) and substitute the following:

34 U. S. C., Supp. V, § 292 (a).
Selection boards.
Appointment, meetings, composition, etc.

"(a) The board for the recommendation of line officers for promotion to the grades of rear admiral and captain shall consist of nine rear admirals on the active list of the line of the Navy, not restricted by law to the performance of shore duty only. The board for the recommendation of line officers for promotion to the grade of commander shall consist of three rear admirals and six captains on the active list of the line of the Navy, not restricted by law to the performance of shore duty only. These boards shall be appointed by the Secretary of the Navy and convened at least once each year and at such times as the Secretary of the Navy may direct."

34 U. S. C., Supp. V, §§ 293, 313.

Section 7, in subsections (a) and (b), strike out "or who is not physically qualified".

34 U. S. C., Supp. V, § 294 (a).

Section 8, in subsection (a), strike out "other than medical".

34 U. S. C., Supp. V, § 297 (e).
Recommendations of line selection board.

Section 9, strike out subsection (f) and substitute the following:

"(f) All reports or recommendations of a line selection board under any provision of law shall require the concurrence of at least two-thirds of the members."

34 U. S. C., Supp. V, § 300 (b).

Section 11, in subsection (b), at the end of the second proviso insert "with retired pay computed as provided in section 12 (b) of this Act".

34 U. S. C., Supp. V, § 404 (f).

Section 12, subsection (f), in line 5 change "from" to "to", and in line 6, after "promoted", insert "computed as provided in subsection (b) of this section".

"C"

Article 4477
(The Sanitary Code of Texas)

Rules 34-57
(Vital Statistics)

DEPOTS, COACHES AND SLEEPERS

Rule
58. Diseases barred from public vehicles.
59. Ventilation and heat.
60. Cuspidors.
61. Dry cleaning prohibited.
62. Coaches.
63. Railway stations.
64. Parlor, buffet and dining cars.
65. Interurban and street cars.
66. Sleeping cars.
67. Record of disinfection.
68. Water coolers.
69. Expectorating on floors.
70. Expectorating in basins.
71. Separate compartment for porter.
72. Repealed.
73. Certain floor covering prohibited.
74. Water closets.
75. Railway premises shall be drained.
76. Water containers screened.

TRANSPORTATION OF DEAD BODIES

77 to 86. Repealed.

Article
4477a. Amended and duplicate birth certificates for correction of errors.
4477b. Penalty for violating rule of Sanitary Code relating to Vital Statistics.
4477c. Penalty for birth or death information violations.
4477d. Penalty for violating other Sanitary Code provisions.

Cross References

Cities, towns and villages, sanitary department, see arts. 1071 to 1077.
Cooperation between municipal authorities, see art. 4434.
Dead bodies, use for advancement of medical science, see art. 4584.
Sewage transportation, treatment and disposal services, see art. 1109i et seq.

Article 4477. Sanitary code

The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit:

Constitutional Provisions

Article 16, § 32, provides: "The Legislature may provide by law for the establishment of a Board of Health and Vital Statistics, under such rules and regulations as it may deem proper."

guards in charge with the fact of their being properly authorized health officers, and with the additional statement that they are fully acquainted with the nature of the disease that they are visiting, and further that they will take proper precautions to prevent carrying the infection themselves.

VITAL STATISTICS

Cross References

Amended or duplicate birth certificates where word "Mexican" or other nationality has been erroneously inserted, see art. 4477a.
Inquests upon dead bodies, see Vernon's Ann.C.C.P. art. 49.01 et seq.

Law Review Commentaries

When is the heart donor dead? 6 Houston L.Rev. 86 (1968).

Library References

Dead Bodies ⇐1, 5.
Health and Environment ⇐34, 35.
C.J.S. Dead Bodies §§ 2, 4, 5.
C.J.S. Health §§ 26, 27, 28.

Rule 34. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 34a. State Department of Health.—The State Department of Health [1] shall have charge of the registration of vital statistics; shall establish a Bureau of Vital Statistics with suitable offices properly equipped for the preservation of its official records; shall install a state-wide system of vital statistics; shall make and may amend necessary regulations, give instructions and prescribe forms for collecting, recording, transcribing, compiling and preserving vital statistics; shall require the enforcement of the Vital Statistics Law and the regulations made pursuant thereto; shall in time of emergency be authorized to suspend any part or parts of the Vital Statistics Law which tend to hinder or impede uniform and efficient registration of vital events and substitute therefor emergency regulations designed to expedite such registration under disaster conditions; and shall from time to time recommend any additional legislation that may be necessary for this purpose.

[1] State Department of Health abolished and Department of Health Resources created by Acts 1975, 64th Leg., ch. 323. See art. 4418g.

Rule 35. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 35a. State Health Officer and Registrar of Vital Statistics.—The State Health Officer [1] shall have general supervision over the central Bureau of Vital Statistics, and shall appoint the director of

the Bureau of Vital Statistics, who shall be a competent vital statistician, and who shall be the State Registrar of Vital Statistics.

[1] Office of State Health Officer abolished and Office of Commissioner of Health created by Acts 1955, 54th Leg., ch. 195; Commissioner of Health abolished and Board of Health Resources created by Acts 1975, 64th Leg., ch. 323. See art. 4418g.

Rule 36. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 36a. Registration districts.—For the purposes of this Act [1] the State shall be divided into primary registration districts as follows: Each justice of the peace precinct and each incorporated town of two thousand, five hundred (2,500) or more population, according to the last United States Census, shall constitute a primary registration district, provided the State Board of Health [2] may combine two (2) or more registration districts, or may divide a primary registration district into two (2) or more parts, so as to facilitate registration, and in the justice of the peace precinct, the justice of the peace shall be local registrar, and in cities of two thousand, five hundred (2,500) or more, according to the last United States Census, the city clerk or city secretary shall be the local registrar of births and deaths.

It is hereby declared to be the duty of the justice of the peace in the justice of the peace precinct, and the city clerk or city secretary in the city of two thousand, five hundred (2,500) or more population to secure a complete record of each birth, death, and stillbirth that occurs within their respective jurisdictions.

[1] Rules 34a to 55a of this article and art. 4477c.
[2] State Board of Health abolished and Department of Health Resources created by Acts 1975, 64th Leg., ch. 323. See art. 4418g.

Rule 37. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 37a. Local registrar.—Every Local Registrar shall select a Deputy-Registrar to the end that at all times a Registrar may be available for the registration of births and deaths, and all reports made to the Bureau of Vital Statistics shall be over the signature of the Local Registrar.

In any district where the Local Registrar fails or refuses to secure the registration of all births and deaths in his district, or neglects to discharge the duties of his office as set forth in this Act,[1] the State Board of Health shall declare that district to be without a Local Registrar of Births and Deaths, and shall, with the confirmation of the County Judge or the City Mayor, as the case may be, appoint a Local Registrar of Births and Deaths for that District.

[1] Rules 34a to 55a of this article and art. 4477c.

Rule 38. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 38a. Dead bodies.—(a) When a death or stillbirth occurs outside this State, a burial-transit permit issued in accordance with the law and regulations in force where the death or stillbirth occurred shall authorize the transportation of the body into or through this State, and further such permit shall be accepted by any cemetery or crematory as authorization for burial, cremation, or other disposal of the body in this State. (b) The State Department of Health shall regulate the disposal, transportation, interment, and disinterment of dead bodies, to such extent as may be reasonable and necessary for the protection of the public health and safety.

Rule 39. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 39a. Report of stillborn.—Subject to the regulations of the State Department of Health, a certificate of each stillbirth which occurs in this state shall be filed with the local registrar of the district in which the stillbirth occurred, and if the place of stillbirth is not known, the certificate shall be filed with the local registrar of the district in which the body was found. The standard certificate of stillbirth shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. All items prescribed on the certificate of stillbirth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The person in charge of interment or of removal of the body from the district for disposition shall be responsible for obtaining and filing the certificate and shall supply on such certificate over his signature the data relating to the disposition of the body. He shall obtain the required information from the following persons, over their respective signatures: (a) Personal data shall be supplied by the person best qualified to supply them; (b) Except as otherwise provided, the medical certification shall be made by the person in attendance at the stillbirth. Stillbirths occurring without attendance shall be treated as deaths without medical attendance as provided in Rule 41a, Article 4477, Revised Civil Statutes of Texas. The certificate of stillbirth shall be filed in the same manner as a certificate of death.

Rule 40. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 40a. Death certificates.—A certificate of each death which occurs in this State shall be filed with the local registrar of the district in which the death occurred, and if the place of death is not known, the certificate shall be filed with the local registrar of the

Rule 40a

district in which the body was found. The standard certificate of death shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. All items prescribed on the certificate of death are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The person in charge of interment or of removal of the body from the district for disposition shall be responsible for obtaining and filing the certificate and shall supply on such certificate over his signature the data relating to the disposition of the body. He shall obtain the required information from the following persons, over their respective signatures: (a) Personal data shall be supplied by a competent person having knowledge of the facts, (b) Except as otherwise provided, the medical certification shall be made by the physician, if any, last in attendance on the deceased. If the deceased shall have rendered service in any way,[1] campaign or expedition of the United States of America, the Confederate States of America or the Republic of Texas, or who at the time of death was in the service of the United States of America, or a wife or widow of any person who has served in any war, campaign or expedition of the United States of America, the Confederate States, or the Republic of Texas, the funeral director or person having charge of the disposition of the body shall show the following facts on the reverse side of the death certificate: the organization in which service was rendered, the serial number taken from the discharge papers or the adjusted service certificate, the name and post office address of the next of kin or next friend of the deceased. And provided that when such a death certificate is filed, the local registrar shall immediately notify the nearest Congressionally Chartered Veteran Organizations. And provided further, that the State Registrar, when such certificate is filed with the State Bureau of Vital Statistics, shall notify the State Service Officer of the Adjutant General's Department and the State Adjutant of the American Legion and the State Comptroller.

[1] So in enrolled bill. Probably should read "war."

Rule 41. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 41a. Death without medical attendance.—In case of any death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall inform the local health officer and refer the case to him for immediate investigation and certification; provided that when the local health officer is not a physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts; provided further, that if the registrar or the

local health officer, as the case may be, as [1] in doubt as to the cause of death, or if the case be one otherwise properly referable to a Justice of the Peace for inquest into the cause of death, he shall then refer the case to a proper Justice of the Peace for inquest, investigation, and certification. And the Justice of the Peace or other proper officer whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death shall state in his certificate the name of the disease causing death, or, if from external causes, (1) the means of death; and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death; provided, further, that when a death of any person not a resident of that district, or unknown in that district, occurs, the Justice of the Peace or person acting as coroner shall secure the finger prints of the deceased and the following physical marks of identification:

(a) Color of hair
(b) Color of eyes
(c) Height
(d) Weight
(e) Deformities
(f) Tattoo marks
(g) Such other facts as set forth by the State Board of Health as will be of assistance in identifying the deceased.

The finger prints and the physical identification marks shall be placed on a form prescribed by the State Board of Health, and shall be attached to the death certificate. The State Registrar shall forward to the State Department of Public Safety the report showing the finger prints and other physical marks of identification.

[1] So in enrolled bill; probably should read "is".

Rule 42. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 42a. Undertaker's certificate.—That the undertaker, or person acting as undertaker, shall file the certificate of death with the local registrar of the district in which the death occurred; provided that any person who furnishes a casket, coffin or box in which to bury the dead and who renders service like or similar to that usually rendered by an undertaker, shall for the purposes of this Act [1] be deemed an undertaker. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the health officer, justice of peace, or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in Sections

7 and 8.[2] And he shall then state the facts required relative to the date and place of burial or removal, over his signature and with his address, and present the completed certificate to the local registrar.

[1] Rules 34a to 55a of this article and art. 4477c.
[2] Rules 40a and 41a of this article.

Rule 43. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 43a. Form of burial-transit permit.—The standard burial-transit permit shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health.

Rule 44. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 44a. Report as to interment.—The person in charge of any premises on which interments are made shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker and such other information as the state registrar may direct; which record shall at all times be open to official inspection.

Rule 45. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 45a. Births.—That the birth of each and every child born in this state shall be registered as hereinafter provided.

Rule 46. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 46a. Birth certificates.—That within five days after the date of each birth, there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the State Department of Health with a view to procuring a full and accurate report with respect to each item of information enumerated in Section 14 of this Act.[1]

In each case where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician, midwife, or person acting as midwife, to file in accordance herewith the certificate herein contemplated.

In each case where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred or the manager or superintendent of the public or private institution where the birth occurred, each in

the order named, within five days after the date of such birth, to report to the local registrar the fact of such birth. In such case and in case the physician, midwife, or person acting as midwife, in attendance upon the birth is unable, by diligent inquiry, to obtain any item or items of information contemplated in Section 14 of this Act, it shall then be the duty of the local registrar to secure from the person so reporting, or from any other person having the required knowledge, such information as will enable him to prepare the certificate of birth herein contemplated, and it shall be the duty of the person reporting the birth or who may be interrogated in relation thereto to answer correctly and to the best of his knowledge all questions put to him by the local registrar which may be calculated to elicit any information needed to make a complete record of the birth as contemplated by said Section 14, and it shall be the duty of the informant as to any statement made in accordance herewith to verify such statement by his signature, when requested so to do by the local registrar.

[1] Rule 47a of this article.

Rule 47. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 47a. Form and contents of birth certificates; supplementary certificate; certificates of adoption, annulment and revocation.—The standard certificate of birth shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. All items prescribed on the certificate of birth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. Provided that the name of the father, or any information by which he might be identified, shall not be written into the birth or death certificate of any illegitimate child; and provided further, that any statement that the father of an illegitimate child wishes to make as to its parentage may, when placed in the form of an affidavit, be attached to the original birth record. The state registrar, county clerk, or local registrar shall not issue a certified copy disclosing illegitimacy or otherwise disclose illegitimacy unless the issuance of the certified copy or the disclosure is authorized by order of the county court of the county in which the birth, death, or fetal death occurred or unless the person applying for the certified copy is the natural mother of the illegitimate child and such child has not been adopted by other parties. The State Department of Health shall be specifically authorized to use and to provide upon request to other state agencies records pertaining to illegitimate births in connection with programs to notify the mothers of young children about health needs for the children.

Subject to the regulations of the State Department of Health, any person: (a) legitimated by the subsequent marriage of its parents; (b) whose parentage has been determined by a court of competent

jurisdiction; or (c) adopted under the law existing at the time of adoption in this state or any other state or territory of the United States of America may request the state registrar to file a supplementary certificate of birth on the basis of the status subsequently acquired or established and of which proof is submitted. The application to file a supplementary certificate of birth may be filed by the person, if of age, or a legal representative of the person. The state registrar shall require such proof in these cases as the State Department of Health may by regulation prescribe. The preparation and filing of supplementary certificates of birth based on legitimation, paternity determination, and adoption shall be in accordance with the regulations of the State Department of Health. Provided, however, that when a child is adopted the new birth certificate shall be in the names of the parents by adoption, and the copies of birth certificates or birth records made therefrom shall not disclose the child to be adopted. After the supplementary certificate is filed, any information disclosed from the record shall be made from the supplementary certificate, and access to the original certificate of birth and to the documents filed upon which the supplementary certificate is based shall not be authorized except upon order of a court of competent jurisdiction.

A certificate of each adoption, annulment of adoption, and revocation of adoption ordered or decreed in this state shall be filed with the state registrar as hereinafter provided. The information necessary to prepare the certificates shall be supplied to the clerk of the court by the petitioner for adoption, annulment of adoption, or revocation of adoption at the time the petition is filed. The clerk of the court shall thereupon prepare the certificate on a form furnished by and containing such items of information as may be determined by the State Department of Health and shall, immediately after the decree becomes final, complete the certificate. On or before the 10th of each month, the clerk shall forward to the state registrar the certificates completed by him for decrees which have become final during the preceding calendar month.

Provided, that the above provisions shall not, in any way, be construed as affecting the property rights of natural or adoptive parents or of natural or adopted children, or as amending, modifying, or repealing any of the present laws of the State of Texas governing descent and distribution of property.

Subject to the regulations of the State Department of Health, any person whose name has been changed by court order may request the state registrar to attach to the original birth record an amendment reflecting the change of name. The request to attach such amendment may be made by the person, if of age, or a legal representative

of the person. The state registrar shall require such proof of change of name as the State Department of Health may by regulation prescribe.

Rule 47b. Transfer of item relating to legitimacy status of person on certificate of birth.—The item as to the legitimacy status of a person shall be included in the section entitled "For Medical and Health Use Only" of the standard certificate of birth. The section entitled "For Medical and Health Use Only" shall not be considered a part of the legal certificate of birth.

Rule 48. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 48a. Child's name.—That when any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named.

Rule 49. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 49a. Registration of physicians, midwives and undertakers.—That every physician, midwife, and undertaker shall, without delay, register his or her name, address and occupation with the local registrar of the district in which he or she resides, or may hereafter establish a residence; and shall thereupon be supplied by the local registrar with a copy of this Act,[1] together with such rules and regulations as may be prepared by the state registrar relative to its enforcement. Within thirty days after the close of each calendar year each local registrar shall make a return to the state registrar of all physicians, midwives, and undertakers or persons who have acted as such who have been registered in his district during the whole or any part of the preceding calendar year; provided, that no fee or other compensation shall be charged by the local registrars to physicians, midwives, or undertakers or persons acting as such for registering their names under this section or making returns thereof to the state registrar.

[1] Rules 34a to 55a of this article and art. 4477c.

Rule 50. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 50a. Record of inmates of hospitals and institutions.—That all superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal

and statistical particulars relative to the inmates in their institutions at the date of approval of this Act,[1] which are required in the forms of the certificates provided for by this Act, as directed by the state registrar; and thereafter such record shall be, by them, made for all future inmates at the time of their admittance. And in case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they can not be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

[1] Rules 34a to 55a of this article and art. 4477c.

Rule 50b. Marriage license application.—(a) After January 1, 1966, the county clerk in each county in this state shall file without fee a copy of each completed application for marriage license with the Bureau of Vital Statistics of the State Department of Health within 90 days after the date of the application.

(b) The Bureau of Vital Statistics shall establish and maintain a consolidated state-wide alphabetical index of all applications for a marriage license based upon the names of both parties. The state-wide index does not take the place of the indexes required in each county.

(b–1) After December 31, 1969, the county clerk of each county shall transmit to the Bureau of Vital Statistics, within 90 days after execution, a copy of each declaration of informal marriage executed under Section 1.92 of the Family Code. The Bureau shall incorporate the information in each declaration in the state-wide alphabetical index established under Subsection (b) of this section, and the information shall be treated as provided in Subsection (c) of this section.

(c) The Bureau of Vital Statistics shall upon request furnish any information it has on record pertaining to the marriage of any person, but the Bureau shall not issue any certificate or certified copies of the information. The Bureau may charge a fee of one dollar for the information it gives relating to any person under this Section. All fees collected under this Section shall be deposited in the State Treasury to the credit of the Vital Statistics Fund.

Rule 50c. Reporting of divorces and annulments of marriage.—(a) The State Bureau of Vital Statistics shall adopt a form for the reporting of divorces and annulments of marriage, which form shall provide for the following items of information:

(1) the full names of the parties, their usual residences, their ages, their places of birth, their color or race, and the number of children, date and place of marriage.

(2) the date of the granting of the divorce or annulment of marriage, the style and docket number of the case, and the court in which the divorce or annulment of marriage was granted.

(b) The State Bureau of Vital Statistics shall furnish sufficient copies of the form to each district court clerk.

(c) When a final judgment for a divorce or annulment of marriage is presented to the court for a final decree the attorney shall enter the above-listed items of information regarding the parties on the report of divorce or annulment of marriage form prescribed by the State Bureau of Vital Statistics, and such form shall be submitted to the district court clerk with the final judgment.

(d) Before the 10th of each month the district court clerk shall file with the State Bureau of Vital Statistics a completed form for each divorce or annulment of marriage granted in the district court during the preceding calendar month.

(e) For each report of divorce or annulment of marriage filed with the State Bureau of Vital Statistics, the district court clerk shall receive a fee of $1.00 which is to be taxed as costs in each case in which a divorce or annulment of marriage is granted.

(f) The State Bureau of Vital Statistics shall establish and maintain a consolidated statewide alphabetical index of all divorce and annulment of marriage forms based upon the names of both parties.

(g) The state registrar shall, upon request, furnish to any applicant any information he has on record pertaining to any divorce or annulment of marriage, but he shall not issue certified copies of reports of divorces or annulments of marriages. The state registrar shall charge the applicant a fee of $1.00 for searching the statewide index of divorces and annulments of marriages, and all fees collected under this section shall be deposited in the state treasury to the credit of the Vital Statistics Fund.

(h) The provisions of this section shall apply to all petitions for divorce or annulment of marriage filed on and after January 1, 1968.

Rule 51. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 51a. Blanks and registration forms; index of births and deaths; records; transcripts; fees; delayed registrations; judicial procedure to establish facts of birth.—A. The State Department of Health shall prepare, print, and supply to local registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this Act, and each city and incorporated town shall supply its local registrar, and each county shall supply the county clerk with permanent record books, in forms approved by the State Registrar, for the recording of all

births, deaths, and stillbirths occurring within their respective jurisdictions. The State Registrar shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other forms shall be used than those approved by the State Department of Health. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, informants or funeral directors, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State Department of Health, or upon the original certificate, such information as they may possess regarding any birth, death, or stillbirth upon demand of the State Registrar, in person, by mail, or through the local registrar. After its acceptance for registration by the local registrar, no record of any birth, death, or stillbirth shall be altered or changed; provided, however, that if any such record is incomplete, or satisfactory evidence can be submitted proving the record to be in error in any respect, an amending certificate may be filed for the purpose of completing or correcting such record, which amendment shall be in a form prescribed by the State Department of Health and shall, if accepted for filing, be attached to and become a part of the legal record of such birth, death, or stillbirth. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers and mothers. If any organization or individual is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such organization or individual may file such record or a duly authenticated transcript thereof with the State Registrar. If any person desires a transcript of any such record, the State Registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of Ten Cents (10¢) per folio, Fifty Cents (50¢) per hour or fraction of an hour necessarily consumed in making such transcript, and to a fee of Twenty-five Cents (25¢) for the certificate, which fees shall be paid by the applicant; provided, that before the issuance of any such transcript, the State Registrar shall be satisfied that the applicant is properly entitled thereto, and that it is to be used only for legitimate purposes.

B. Delayed Registration of Births.

Subject to the regulations and requirements of the State Department of Health:

1. An application to file a delayed certificate of the birth of a person born in this state, and not previously registered as provided by law, shall be made to the State Registrar of Vital Statistics.

2. When the birth occurred more than five days but less than one year prior to the application for registration, the birth may be registered on a certificate of live birth and be submitted for filing to the local registrar of the district in which the birth occurred. The local registrar may accept the certificate for filing when such evidence is submitted to substantiate the facts of birth as may be required by the local registrar. A statement may be required to explain the delay in filing the certificate.

3. When the birth occurred one year but less than four years prior to the application for registration, the birth shall be registered on a form prescribed by the State Registrar of Vital Statistics and shall be submitted to him for filing. The State Registrar may accept the certificate for filing when such evidence is submitted to substantiate the facts of birth as may be required by the State Registrar. A statement may be required to explain the delay in filing the certificate. Each certificate thus filed shall be marked "Delayed."

4. When the birth occurred four or more years prior to the application for registration, the certificate of birth shall be prepared on a form entitled "Delayed Certificate of Birth," which form shall be prescribed and furnished by the State Department of Health. The information provided on such registration form shall be subscribed and sworn to by the person whose birth is to be registered before an official authorized to administer oaths. When such person is not competent to swear to this information, it shall be subscribed and sworn to by a parent, legal guardian, or the representative of such person.

a. The form shall provide for the name and sex of the person whose birth is to be registered, and place and date of birth, the names of the parents, and their birthplaces; and such other information as may be required by the State Registrar.

b. When the certificate is submitted, the State Registrar shall add a description of each document submitted in support of the delayed registration including the title or kind of document; the name and address of the affiant if the document is an affidavit of personal knowledge, or of the custodian, if the document is a record of a business entry or a certified copy thereof; the date of the original entry and the date of the certified copy; and

c. The certification of the State Registrar shall be added to those certificates accepted for filing. The State Registrar shall issue certified copies of such certificates in accordance with the provisions of Section 21 of this Act.[1]

5. The State Registrar shall accept the registration if the applicant was born in this state and if the applicant's statement of date and place of birth and parentage is established to the satisfaction of the State Registrar by the following evidence:

a. If the birth occurred four years but less than fifteen years prior to the date of filing:

(1) The statement of date and place of birth shall be supported by at least two documents, only one of which may be an affidavit of personal knowledge.

(2) The statement of parentage shall be supported by at least one document, which may be one of the above documents.

b. If the birth occurred fifteen or more years before the date of filing:

(1) The statement of date and place of birth shall be supported by at least three documents, only one of which may be an affidavit of personal knowledge.

(2) The statement of parentage shall be supported by at least one document, which may be one of the above documents.

(3) Any document accepted as evidence, other than an affidavit of personal knowledge, shall be at least five years old. A copy or abstract of such document may be accepted if certified as true and correct by the custodian of the document.

6. When an applicant does not submit the documentary evidence as specified above, or when the State Registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence, the State Registrar shall not register the delayed certificate, but shall furnish the applicant with a statement of the reasons for such action, and shall advise the applicant of his right to appeal to the county court for probate matters of the county of birth as provided in Subsection C of this Section.

7. A certificate of birth registered one year or more after the date of birth shall show on its face the date of the registration and shall be marked "Delayed."

8. If an application for a delayed registration of birth is not actively prosecuted, the State Registrar shall return the application, supporting evidence, and any related instruments to the applicant or make such other disposition thereof as the State Registrar may deem appropriate.

9. For each application for a delayed certificate of birth, the State Registrar shall be entitled to a fee of Three Dollars ($3.00), said fee to be paid by the applicant. All such fees received by the State Registrar under the provisions of this Section shall be deposited and used as provided in Section 21 of this Act.

C. Judicial Procedure to Establish Facts of Birth.

1. If a delayed certificate of birth is not accepted by the State Registrar under the provisions of Subsection B of this Section, a petition may be filed with the county court for probate matters of the county in which the birth occurred for an order establishing a record of the date of birth, place of birth, and parentage of the person whose birth is to be registered.

2. Such petition shall be made on a form prescribed and furnished by the State Department of Health.

3. The petition shall be accompanied by a statement of the State Registrar issued in accordance with Subsection B(6) of this Section and all documentary evidence which was submitted to the State Registrar in support of such registration.

4. If the court, from the evidence presented, finds that the person for whom a delayed certificate of birth is sought was born in this State, it shall make findings as to the date and place of birth and parentage and such other findings as the case may require and shall issue an order on a form prescribed and furnished by the State Department of Health to establish a record of birth. This order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

5. The fees of the court shall be the same as those set out in Articles 3925 and 3930, Vernon's Texas Civil Statutes.

6. The clerks of the courts shall forward each such order to the State Registrar within seven days after it was entered. Such order shall be registered by the State Registrar and shall constitute the record of birth, from which copies may be issued in accordance with the provisions of Section 21 of this Act.

D. Delayed Registration of Deaths.

Any person wishing to file the record of any death occurring in Texas and not previously registered may submit to the county court for probate matters of the county in which the death occurred a record of that death, written on the adopted form of death certificate. The certificate shall be substantiated by the affidavit of the physician last in attendance upon the deceased, or the funeral director who buried the body. When the affidavit of the physician or funeral director cannot be secured, the certificate shall be supported by: (a) the affidavit of some person who was acquainted with the facts sur-

rounding the death, at the time the death occurred; and (b) the affidavit of some person who was acquainted with the facts surrounding the death, and who is not related to the deceased by blood or marriage. Provided that when application is made as provided in this paragraph, a fee of One Dollar ($1.00) shall be collected by the court, Fifty Cents (50¢) of which shall be retained by the court, and Fifty Cents (50¢) of which shall be retained by the clerk of the court for recording said death certificate. Within seven (7) days after the certificate has been accepted and ordered filed by the court, the clerk of that court shall forward the certificate to the State Bureau of Vital Statistics with an order from the court to the State Registrar that the certificate be accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act. Such certified copies shall be prima facie evidence in all courts and places of the facts stated thereon. The State Bureau of Vital Statistics shall furnish the forms upon which such records are filed, and no other form shall be used for that purpose.

[1] Rule 54a of this article.

Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930 (including subsec. D. of this rule), see note under article 3930.

Rule 52. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 52a. Duties of local registrars.—That each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return. All certificates, either of birth or death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission.

If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number 1 for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him

in a record book supplied in accordance with provisions of Section 18 of this Act,[1] to be preserved permanently in his office as the local record, in such manner as directed by the state registrar, or in the event that local ordinances require that all reports of births and deaths be made in duplicate, he may permanently bind the duplicate reports and index them in the manner prescribed in Section 18 for the state registrar. And he shall, on the tenth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for such purposes.

[1] Rule 51a of this article.

Rule 53. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 53a. Fees.—That each local registrar shall be paid the sum of Fifty Cents (50¢) for each birth, death, and stillbirth certificate properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the State Bureau of Vital Statistics, as required by this Act,[1] unless such local registrar shall be acting as registrar in an incorporated city where the compensation of the registrar is otherwise fixed by city ordinance.

The State Registrar shall annually certify to the county commissioners court or county auditor, as the case may be, the number of birth, death and stillbirth certificates filed by each local registrar at the rate fixed herein, and provided that the State Registrar may render such statements monthly or quarterly, at the discretion of the State Board of Health, and the commissioners court or county auditor, as the case may be, shall audit such statement and the county treasurer shall pay such fees as are approved by the commissioners court or the county auditor, at the time such statement is issued.

And provided further, that the justice of the peace, city clerk or secretary, and the appointed local registrar shall submit to the commissioners court or county auditor, as the case may be, a true and accurate copy of each birth, death, and stillbirth certificate filed with him, and such copies shall bear his file date and signature and shall be deposited in the county clerk's office, provided, however, that this provision shall not apply to cities having an ordinance requiring that true and accurate copies of each birth, death, and stillbirth certificate be permanently filed in the office of the city registrar. The county clerk shall be paid for indexing and preserving such records, such compensation as may be agreed upon by the commissioners court.

[1] Rules 34a to 55a of this article and art. 4477c.

Rule 54. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Rule 54a. Copies of records.—Subject to the regulations of the State Department of Health controlling the accessibility of vital records, the State Registrar shall, upon request, supply to any properly qualified applicant a certified copy of a record, or any part thereof, registered under the provisions of this Act,[1] for the making and certification of which he shall be entitled to a fee of Two Dollars ($2.00) to be paid by the applicant; provided, that such certified copies shall be issued in only such form as approved by the State Department of Health. And any such copy of a record, when properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files where a record is not found or a certified copy is not made, the State Registrar shall be entitled to a fee of Two Dollars ($2.00), said fee to be paid by the applicant. The State Registrar shall, upon request of any parent or guardian, supply, without fee, a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment. The State Registrar shall issue free of cost to any veteran, his widow, orphan or other dependents, a certified copy of any record not otherwise prohibited by law when such record is to be used in the settlement of a claim against the government. The State Registrar may issue, upon court order, without fee, a certified copy of a birth record in cases relating to child labor and the public schools. Provided, that the national agency in charge of the collection of vital statistics may obtain, without expense to the State, transcripts of vital records without payment of the fees herein prescribed; and provided further, that the State Registrar is hereby authorized to act as special agent for that agency in accepting the use of the franking privilege and blanks furnished by that agency; and provided further, that the Bureau of Vital Statistics of the State Department of Health is hereby authorized to enter into a contract with the national agency in charge of the collection of vital statistics in order to have transcribed for that agency copies of vital records filed with the State Bureau of Vital Statistics. The State Registrar shall keep a true and correct account of all money received by him under these provisions, and deposit the same with the State Treasurer at the close of each month and at such other intervals as the Registrar deems advisable, and all such money shall be kept by the State Treasurer in a special and separate fund, to be known as the vital statistics fund, and the amounts so deposited in this fund shall be used for defraying expenses incurred in the enforcement and operation of this Act.

The State Registrar shall refund to the applicant any fee received for services which the Bureau cannot render. If the money has been

deposited in the vital statistics fund, the Comptroller shall issue a warrant against the fund, upon presentation of a claim signed by the State Registrar, for the purpose of refunding the payment.

The State Registrar shall be entitled to a fee of Three Dollars ($3.00) for filing a new birth certificate based on adoption, a fee of Three Dollars and Fifty Cents ($3.50) for filing a new birth certificate based on legitimation or paternity determination, and a fee of Two Dollars ($2.00) for filing an amendment to a birth certificate based on a court order of change of name, said fees to be paid by the applicants.

[1] Rules 34a to 55a of this article and art. 4477c.

Rule 55. Repealed by Acts 1927, 40th Leg., 1st, C.S., p. 116, ch. 41, § 24.

Rule 55a. Reports of violations of Act.—That each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this Act [1] in his registration district, under the supervision and direction of the state registrar. And he shall make an immediate report to the state registrar of any violation of this law coming to his knowledge, by observation or upon complaint of any person, or otherwise.

The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and is hereby granted supervisory power over local registrars, deputy local registrars, and subregistrars, to the end that all of its requirements shall be uniformly complied with. The state registrar, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this Act to the county attorney, with a statement of the facts and circumstances; and when any such case is reported to him by the state registrar, the county attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. And upon request of the state registrar, the attorney general shall assist in the enforcement of the provision of this Act.

[1] Rules 34a to 55a of this article and art. 4477c.

Rules 56 and 57. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

Applicability to juveniles

Sec. 603. Articles III, IV, and V of this Act are available to a juvenile. Nothing in this Act shall take precedence over any provision of the Family Code relating to juveniles unless expressly stated herein.

Rules and delegation of powers

Sec. 604. The executive director may promulgate rules for the implementation of this Act and may designate any state officer or employee to carry out any of its functions under this Act.

ARTICLE VII. MISCELLANEOUS

Continuation of rules

Sec. 701. Any orders and rules promulgated under any law affected by this Act and in effect on the effective date of this Act and not in conflict with it continue in effect until modified, superseded, or repealed.

Appropriation

Sec. 702. The sum of $210,000 is appropriated from the General Revenue Fund to the Texas Department of Community Affairs for each year of the biennium beginning September 1, 1979, for the purpose of implementing the provisions of this Act.

Effective date

Sec. 703. This Act takes effect September 1, 1979; provided that for the period beginning September 1, 1979, and ending August 31, 1981, the Act shall authorize but not require the executive director to make emergency drug treatment services available pursuant to this Act.

Acts 1979, 66th Leg., p. 1843, ch. 750, eff. Sept. 1, 1979.

Title of Act:

An Act relating to the prevention of drug dependence and to the treatment and rehabilitation of drug-dependent persons and persons incapacitated by controlled substances; provided a penalty and making an appropriation. Acts 1979, 66th Leg., p. 1843, ch. 750.

Cross References

Adult Probation Commission, see Vernon's Ann.C.C.P. art. 42.121.

Commitment and treatment of narcotic addicts, see art. 5561c–1.

Department of Community Affairs, see art. 4413(201).

Department of Corrections, see art. 6166a et seq.

Department of Health, see art. 4414a et seq.

Department of Human Resources, see V.T.C.A. Human Resources Code, § 11.001 et seq.

Department of Mental Health and Mental Retardation, see art. 5547–202.

Rehabilitation Commission, see V.T.C.A. Human Resources Code, § 111.001 et seq.

Library References

Chemical Dependents ⇐10.

C.J.S. Drugs and Narcotics § 230.

CHAPTER FOUR—SANITARY CODE

Art.
4477e. Spanish surname information on vital statistics records.

Art. 4477. Sanitary code

The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit:

QUARANTINE AND DISINFECTION

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Rule 3. "Contagious diseases."—The term "contagious disease" as used in these regulations shall be held to include the following diseases, whether contagious or infectious; and as such shall be reported to all local health authorities and by said authority reported in turn to the Chairman of the State Board of Health: Asiatic cholera, bubonic plague, typhus fever, yellow fever, Hansen's disease, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), epidemic cerebrospinal meningitis, dengue, typhoid fever, epidemic dysentery, trachoma, and anthrax.

Rule 3 amended by Acts 1977, 65th Leg., p. 316, ch. 149, § 3, eff. May 13, 1977.

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Rule 13. Dangerous contagious diseases; modified quarantine.—In the management and control of smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), and dengue, it is required that the house be placarded, premises placed in modified quarantine, patient in modified isolation, and complete disinfection done upon death or recovery.

Rule 13 amended by Acts 1977, 65th Leg., p. 316, ch. 149, § 2, eff. May 13, 1977.

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VITAL STATISTICS

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Rule 40a. Death certificates.—Not later than the 10th day after the date of each death that occurs in this state, a certificate of death shall be filed with the local registrar of the district in which the death occurred, and if the place of death is not known, the certificate shall be filed with the local registrar of the district in which the body was found. The standard certificate of death shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. All items prescribed on the certificate of death are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The person is charge of interment or of removal of the body from the district for disposition shall be responsible for obtaining and filing the certificate and shall supply on such certificate over his signature the data relating to the disposition of the body. He shall obtain the required information from the following persons, over their respective signatures: (a) Personal data shall be supplied by a competent person having knowledge of the facts, (b) Except as otherwise provided, the medical certification shall be made by the physician, if any, last in attendance on the deceased. If the deceased shall have rendered service in any war, campaign or expedition of the United States of America, the Confederate States of America or the Republic of Texas, or who at the time of death was in the service of the United States of America, or a wife or widow of any person who has served in any war, campaign or expedition of the United States of America, the Confederate States, or the Republic of Texas, the funeral director or person having charge of the disposition of the body shall show the following facts on the reverse side of the death certificate: the organization in which service was rendered, the serial number taken from the discharge papers or the adjusted service certificate, the name and post office address of the next of kin or next friend of the deceased. And provided that when such a death certificate is filed, the local registrar shall immediately notify the nearest Congressionally Chartered Veteran Organizations. And provided further, that the State Registrar, when such certificate is filed with the State Bureau of Vital Statistics, shall notify the State Service Officer of the Adjutant General's Department and the State Adjutant of the American Legion and the State Comptroller.

Rule 40a amended by Acts 1981, 67th Leg., p. 1811, ch. 400, § 1, eff. Aug. 31, 1981.

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Rule 47a. Form and contents of birth certificates; supplementary certificate; certificates of adoption, annulment and revocation.—The standard certificate of birth shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. Any person may apply to the State Department of Health to have any indication of illegitimacy removed from his or her birth record, including separate medical records. The Department shall charge a fee of $10.00 for this service. All items prescribed on the certificate of birth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The name of the father or any information by which he might be identified may be written in the birth or death certificate of any child:

(a) whose mother was married at the time of conception or birth; or whose mother was subsequently married to the father; or

(b) where paternity of the father has been established in a judicial proceeding. The State Department of Health shall be specifically authorized to use and to provide upon request to other state agencies records pertaining to all births in connection with programs to notify the mothers of young children about health needs for the children.

Subject to the regulations of the State Department of Health, any person: (a) who becomes the legitimate child of its father by the subsequent marriage of its parents; (b) whose parentage has been determined by a court of competent jurisdiction; or (c) adopted under the law existing at the time of adoption in this state or any other state or territory of the United States of America may request the state registrar to file a supplementary certificate of birth on the basis of the status subsequently acquired or established and of which proof is submitted. The application to file a supplementary certificate of birth may be filed by the person, if of age, or a legal representative of the person. The state registrar shall require such proof in these cases as the State Department of Health may by regulation prescribe. The preparation and filing of supplementary certificates of birth based on legitimation, paternity determination, and adoption shall be in accordance with the regulations of the State Department of Health. Provided, however, that when a child is adopted the new birth certificate shall be in the names of the parents by adoption, and the copies of birth certificates or birth records made therefrom shall not disclose the child to be adopted. After the supplementary certificate is filed, any information disclosed from the record shall be made from the supplementary certificate, and access to the original certificate of birth and to the documents filed upon which the supplementary certificate is based shall not be authorized except upon order of a court of competent jurisdiction.

A certificate of each adoption, annulment of adoption, and revocation of adoption ordered or decreed in this state shall be filed with the state registrar as hereinafter provided. The information necessary to prepare the certificates shall be supplied to the clerk of the court by the petitioner for adoption, annulment of adoption, or revocation of adoption at the time the petition is filed. The clerk of the court shall thereupon prepare the certificate on a form furnished by and containing such items of information as may be determined by the State Department of Health and shall, immediately after the decree becomes final, complete the certificate. On or before the 10th of each month, the clerk shall forward to the state registrar the certificates completed by him for decrees which have become final during the preceding calendar month.

Provided, that the above provisions shall not, in any way, be construed as affecting the property rights of natural or adoptive parents or of natural or adopted children, or as amending, modifying, or repealing any of the present laws of the State of Texas governing descent and distribution of property.

Subject to the regulations of the State Department of Health, any person whose name has been changed by court order may request the state registrar to attach to the original birth record an amendment reflecting the change of name.

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The request to attach such amendment may be made by the person, if of age, or a legal representative of the person. The state registrar shall require such proof of change of name as the State Department of Health may by regulation prescribe.

Rule 47a amended by Acts 1977, 65th Leg., p. 80, ch. 14, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2089, ch. 837, § 1, eff. Aug. 29, 1977.

Rule 47b. "For Medical and Health Use Only" section of birth certificate. —The section entitled "For Medical and Health Use Only" shall not be considered a part of the legal certificate of birth.

Rule 47b amended by Acts 1977, 65th Leg., p. 81, ch. 14, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2090, ch. 837, § 2, eff. Aug. 29, 1977.

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Rule 51a. Blanks and registration forms; index of births and deaths; records; transcripts; fees; delayed registrations; judicial procedure to establish facts of birth.—A. The State Department of Health shall prepare, print, and supply to local registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this Act, and each city and incorporated town shall supply its local registrar, and each county shall supply the county clerk with permanent record books, in forms approved by the State Registrar, for the recording of all births, deaths, and stillbirths occurring within their respective jurisdictions. The State Registrar shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other forms shall be used than those approved by the State Department of Health. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, informants or funeral directors, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State Department of Health, or upon the original certificate, such information as they may possess regarding any birth, death, or stillbirth upon demand of the State Registrar, in person, by mail, or through the local registrar. After its acceptance for registration by the local registrar, no record of any birth, death, or stillbirth shall be altered or changed; provided, however, that if any such record is incomplete, or satisfactory evidence can be submitted proving the record to be in error in any respect, an amending certificate may be filed for the purpose of completing or correcting such record, which amendment shall be in a form prescribed by the State Department of Health and shall, if accepted for filing, be attached to and become a part of the legal record of such birth, death, or stillbirth. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers and mothers. When the State Registrar receives the death certificate of a person under 18 years of age whose birth has been registered in this state, the State Registrar shall make a conspicuous notation on the face of the decedent's birth certificate showing that the person is dead and shall provide copies of the death certificate to the county clerk of the county in which the decedent was born and to the local registrar of the district in which the decedent was born. If any organization or individual is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such organization or individual may file such record or a duly authenticated transcript thereof with the State Registrar. If any person desires a transcript of any such record, the State Registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his

services in so furnishing such transcript and certificate he shall be entitled to a fee of Ten Cents (10¢) per folio, Fifty Cents (50¢) per hour or fraction of an hour necessarily consumed in making such transcript, and to a fee of Twenty-five Cents (25¢) for the certificate, which fees shall be paid by the applicant; provided, that before the issuance of any such transcript, the State Registrar shall be satisfied that the applicant is properly entitled thereto, and that it is to be used only for legitimate purposes.

A–1. If an amending certificate of birth filed under Subsection A of this section completes or corrects information in a person's original or supplementary record of birth concerning the person's sex or color or race, then on request of that person or his legal representative, the State Registrar of Vital Statistics, local registrar, or other person who issues birth certificates shall issue a corrected or completed certificate of birth that incorporates the necessary changes in one document instead of issuing a copy of the original or supplementary certificate of birth with an amending certificate attached. The Texas Department of Health shall prescribe the form for certificates issued under this subsection.

A–2. A person whose certificate of birth was amended before the effective date of Subsection A–1 of this section to correct or complete information concerning sex or color or race, or such person's legal representative, may request a corrected or completed certificate of birth under Subsection A–1.

B. Delayed Registration of Births.

Subject to the regulations and requirements of the State Department of Health:

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9. For each application for a delayed certificate of birth, the State Registrar shall be entitled to a fee not to exceed Ten Dollars ($10.00), said fee to be paid by the applicant. All such fees received by the State Registrar under the provisions of this Section shall be deposited and used as provided in Section 21 of this Act.

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Rule 51a, subsec. B, par. 9 amended by Acts 1977, 65th Leg., p. 1689, ch. 669, § 1, eff. Jan. 1, 1978. Rule 51a, subsec. A amended by Acts 1979, 66th Leg., p. 89, ch. 54, § 1, eff. April 19, 1979. Rule 51a, subsecs. A–1 and A–2 added by Acts 1981, 67th Leg., p. 504, ch. 211, § 2, eff. Aug. 31, 1981.

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Rule 52a. Duties of local registrars.—That each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return. All certificates, either of birth or death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission.

If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number 1 for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied in accordance with provisions of Section 18 of this Act,[1] to be preserved permanently in his office as the local record, in such manner as directed by the

state registrar, or in the event that local ordinances require that all reports of births and deaths be made in duplicate, he may permanently bind the duplicate reports and index them in the manner prescribed in Section 18 for the state registrar. And he shall, on the tenth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for such purposes.

When the state registrar notifies the county clerk of the county in which the decedent was born and the local registrar of the district in which the decedent was born, the county clerk and the local registrar shall make a conspicuous notation on the face of the decedent's birth certificate showing that the person is dead.

Rule 52a amended by Acts 1979, 66th Leg., p. 90, ch. 54, § 2, eff. April 19, 1979.

[1] Rule 51a of this article.

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Rule 54a. Copies of records.—Subject to the regulations of the Texas Department of Health controlling the accessibility of vital records, the State Registrar shall, upon request, supply to any properly qualified applicant a certified copy of a record, or any part thereof, registered under the provisions of this Act.[1] The State Registrar is entitled to a fee of Five Dollars ($5.00) for each copy of a birth record or part of a record and Five Dollars ($5.00) for the first copy of a death record and Two Dollars ($2.00) for each additional copy of the record requested by the applicant in a single request. The fee is to be paid by the applicant. A local registrar who issues certified copies of death certificates shall charge the same fee as is charged by the State Registrar. Certified copies shall be issued only in the form approved by the Texas Department of Health. And any such copy of a record, when properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files where a record is not found or a certified copy is not made, the State Registrar shall be entitled to a fee of Five Dollars ($5.00), said fee to be paid by the applicant. The State Registrar shall, upon request of any parent or guardian, supply, without fee, a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment. The State Registrar shall issue free of cost to any veteran, his widow, orphan or other dependents, a certified copy of any record not otherwise prohibited by law when such record is to be used in the settlement of a claim against the government. The State Registrar may issue, upon court order, without fee, a certified copy of a birth record in cases relating to child labor and the public schools. Provided, that the national agency in charge of the collection of vital statistics may obtain, without expense to the State, transcripts of vital records without payment of the fees herein prescribed; and provided further, that the State Registrar is hereby authorized to act as special agent for that agency in accepting the use of the franking privilege and blanks furnished by that agency; and provided further, that the Bureau of Vital Statistics of the Texas Department of Health is hereby authorized to enter into a contract with the national agency in charge of the collection of vital statistics in order to have transcribed for that agency copies of vital records filed with the State Bureau of Vital Statistics. The State Registrar shall keep a true and correct account of all money received by him under these provisions, and deposit the same with the State Treasurer at the close of each month and at such other intervals as the Registrar deems advisable, and all such money shall be kept by the State Treasurer in a special and separate fund, to be known as the vital statistics fund, and the amounts so deposited in this fund shall be used for defraying expenses incurred in the enforcement and operation of this Act.

The State Registrar shall refund to the applicant any fee received for services which the Bureau cannot render. If the money has been deposited in the vital statistics fund, the Comptroller shall issue a warrant against the fund, upon presentation of a claim signed by the State Registrar, for the purpose of refunding the payment.

The State Registrar shall be entitled to a fee of Five Dollars ($5.00) for filing a new birth certificate based on adoption, a fee of Eight Dollars ($8.00) for filing a new birth certificate based on legitimation or paternity determination, and a fee of Five Dollars ($5.00) for filing an amendment to a birth certificate based on a court order of change of name, said fees to be paid by the applicants.

Rule 54a amended by Acts 1977, 65th Leg., p. 1689, ch. 669, § 2, eff. Jan. 1, 1978; Acts 1979, 66th Leg., p. 1135, ch. 543, § 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 824, ch. 296, § 1, eff. Jan. 1, 1982.

1 Rules 34a to 55a of this article and art. 4477c.

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DEPOTS, COACHES AND SLEEPERS

Rule 60. Repealed by Acts 1979, 66th Leg., p. 1145, ch. 550, § 1, eff. Aug. 27, 1979.

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Acts 1977, 65th Leg., p. 1689, ch. 669, which by §§ 1 and 2 amended subsec. B, par. 9 of rule 51a and rule 54a of this article, provided in § 3:

"This Act takes effect January 1, 1978."

Cross References

Autopsy not required for cremation, death caused by pestilential disease under rule 77 of this article, see Vernon's Ann.C.C.P. art. 49.02, § 2.

Medical examiners,

Autopsy not required, death caused by pestilential disease under rule 77 of this article, see Vernon's Ann.C.C.P. art. 49.25, § 10.

Inquests, cause of death uncertain or not known under rules 40a or 41a of this article, see Vernon's Ann.C.C.P. art. 49.25, § 6.

Penalty for birth or death information violations,

"Local register" as one serving in registration district under rule 36a, see art. 4477c, § 1(d).

"Vital Statistics Act" as rules 34a to 55a, see art. 4477c, § 1(b).

Sudden infant death syndrome, cause of death under rule 40a of this article, see art. 4447e-2.

Law Review Commentaries

Medical records: OSHA regulations and the practicing attorney. Edward P. Richards and Katherine C. Rathbun, 43 Texas Bar J. 944 (1980).

Notes of Decisions

2. In general

Op.Atty.Gen.1973, No. H-115 [main volume] overruled Op.Atty.Gen.1982, No. ORD-307.

Section 3(a)(15) of the Open Records Act (art. 6252-17a) excepts "birth and death records maintained by the bureau of vital statistics in the State of Texas," but art. 6600 provides that the county clerk shall give attested copies whenever demanded of all papers recorded in his office; thus, art. 6600 requires that the county clerk make available the birth and death records in his office, and that § 3(a)(15) of art. 6252-17a does not authorize the withholding of such records in the county clerk's custody; overruling Op. Atty.Gen.1973, No. H-115, to the extent of conflict. Op.Atty.Gen.1982, No. ORD-307.

13. —— Correcting or amending death certificate

The county clerk may not remove a death certificate which has an erroneous cause of death and replace it with a new original showing the correct cause of death; the certificate may be corrected in accordance with Rule 51a of this article, by the attachment of an amending certificate. Op.Atty.Gen.1977, No. H-1064.

15. —— Admissibility of death certificate, generally

Where medical examiner, using report prepared by assistant examiner, testified that report showed insured died of arteriosclerotic cardiovascular heart disease, same cause of death as shown on death certificate signed by

"D"

Article 4477 (b) (1911)

Article 4477 (c) (1927)

Article 4477 (c) (1979)

Vernon's Ann. Tex. Stat.

Art. 4477b. Penalty for violating rule of Sanitary Code relating to Vital Statistics

Any person who shall violate any rule of the Sanitary Code of this State relating to vital statistics, or who shall fail to perform any duty imposed on him by said rules herein referred to, shall be fined not less than ten nor more than one hundred dollars. Whoever shall falsely or fraudulently furnish any information for the purpose of making an incorrect record of a birth or death shall be confined in the penitentiary not less than one nor more than two years.

Acts 1911, p. 173; Acts 1917, 35th Leg., p. 332, ch. 129.

Historical Note

This article was transferred from Vernon's Ann.P.C. art. 781 by authority of § 5 of Acts 1973, 63rd Leg., p. 995, ch. 399, enacting the new Texas Penal Code.

Derivation. From Vernon's Pen.Code Supp.1918 (Acts 1917, 35th Leg., ch. 129, p. 332, §§ 13, 13), arts. 801a, 801b, which read as follows:

"Art. 801a. That any person, or persons, who shall violate any of the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction in a court of

competent jurisdiction shall be fined not less than ten dollars ($10.00) nor more than one hundred ($100.00) dollars.

"Art. 801b. That any person who shall falsely or fraudulently furnish any information for the purpose of making an incorrect record of a birth or death, shall be guilty of a felony, and, upon conviction in a court of competent jurisdiction, shall be punished by confinement in the State penitentiary for a term of not less than one year nor more than two years."

Art. 4477c. Penalty for birth or death information violations

Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, (a) shall refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this Act; or (b) shall willfully alter, otherwise than is provided by Section 18 of this Act,[1] or shall falsify any certificate of birth or death, or any record established by this Act; or (c) being required by this Act to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect, or refuse to perform such duty in the manner required by this Act; or (d) being a local registrar, deputy registrar, or subregistrar, shall fail, neglect, or refuse to perform his duty as required by this Act and by the instructions, and direction of the state registrar thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not less than five dollars ($5.00) nor more than fifty dollars ($50.00), and for each subsequent offense not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00), or be imprisoned in the county jail not more than sixty days, or be both fined and imprisoned.

Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 22. Amended by Acts 1973, 63rd Leg., p. 814, ch. 367, § 2, eff. June 12, 1973.

[1] Article 4477, Rule 51a.

Historical Note

This article was transferred from Vernon's Ann.P.C. art. 781a by authority of § 5 of Acts 1973, 63rd Leg., p. 995, ch. 399, enacting the new Texas Penal Code.

Sections 1 to 20, 22, of this Act are published as Rules 34a to 53a of art. 4477.

The 1973 amendatory act deleted former subd. (a), which read: "shall inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found".

Library References

Health and Environment ⇐38. C.J.S. Health § 30.

assistant examiner, the death certificate portion showing cause of death would have been cumulative of opinion expressed by medical examiner, and thus excluding such portion of death certificate was harmless and could not be said to have been calculated to cause or did cause rendition of improper judgment under Vernon's Ann.Rules Civ.Proc., rule 434. Pan American Life Ins. Co. v. Youngblood (Civ.App.1978) 569 S.W.2d 951.

18. Birth certificate—In general

In paternity proceeding, finding that mother had not shown by preponderance of evidence that putative father was natural father of child was against preponderance of evidence, although putative father testified that he believed mother was seeing other men while he was having sexual relations with her, child's birth certificate designated mother's former spouse as child's father, and child was lighter in color than putative father and pigeon-toed, as name of father of illegitimate child could not be used on birth certificate, no evidence was introduced concerning probability of black child being same color as father or probability of child being pigeon-toed when father was not, and mother unequivocally testified that putative father was only man she was having sexual relations with at the time, which testimony was strongly corroborated by blood test establishing 98.5 percent probability that she was telling the truth. G v. G (Civ.App.1980) 604 S.W.2d 521.

Hospital district may not record surname for illegitimate child that is same surname as child's father where that will tend to identify father; otherwise, district may enter on birth certificate surname for child that is different from mother's surname. Op.Atty.Gen.1977, No. H-1078.

Hospital district should not record any information about legitimacy status on birth certificate. Id.

20. —— Correcting or amending birth certificate, generally

Hospital district may alter information on birth certificate prior to its acceptance for registration by local registrar, but not thereafter. Op.Atty.Gen.1977, No. H-1078.

Art. 4477a. Repealed by Acts 1981, 67th Leg., p. 504, ch. 211, § 1, eff. Aug. 31, 1981

See, now, art. 4477, rule 51a, subsecs. A-1, A-2.

Art. 4477b. Repealed by Acts 1979, 66th Leg., p. 317, ch. 146, § 2, eff. May 11, 1979

Art. 4477c. Penalty for birth or death information violations

Definitions

Section 1. As used in this Act, the following words or phrases have the meaning indicated:

(a) "Person" means an individual, corporation, association, or partnership;

(b) "Vital Statistics Act" means Rules 34a to 55a, Article 4477, Revised Civil Statutes of Texas, 1925, as amended;

(c) "State registrar" means the director of the Bureau of Vital Statistics;

(d) "Local registrar" means a person serving as registrar of vital statistics in a primary registration district as specified in Rule 36a, Article 4477, Revised Civil Statutes of Texas, 1925, as amended, or a combination of primary registration districts.

False entries; fraudulent records

Sec. 2. (a) A person commits an offense if he:

(1) intentionally or knowingly makes any false statement in a certificate, record, or report required by the Vital Statistics Act, or in an application for an amendment thereof, or in an application for a delayed certificate of birth or death, or in an application for a certified copy of a vital record, or intentionally or knowingly supplies false information or intentionally or knowingly creates any false record to be used in the preparation of any such report, record, or certificate, or amendment thereof;

(2) without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required by the Vital Statistics Act or a certified copy of such certificate, record, or report;

(3) intentionally or knowingly obtains, possesses, used, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, or report required by the Vital Statistics Act or certified copy thereof so made, counterfeited, altered, amended, or mutilated, or which is false in whole or in part or which relates to the birth of another person, whether living or deceased.

(b) An offense under this section is a felony of the third degree.

Failure to furnish required information, file required certificates, or perform required duties

Sec. 3. (a) A person commits an offense if he:

(1) refuses or fails to furnish correctly any information in his possession affecting any certificate or record required by the Vital Statistics Act;

(2) being required by the Vital Statistics Act to fill out a certificate of birth or death and file same with the local registrar or deliver it upon request to any person charged with the duty of filing the same, shall fail, neglect, or refuse to perform such duty in the manner required by this Act;

(3) being a local registrar, deputy registrar, or subregistrar, shall fail, neglect, or refuse to perform his duty as required by the Vital Statistics Act and by the instructions and directions of the state registrar thereunder.

(b) An offense under this section is a Class C misdemeanor.

Construction with Penal Code

Sec. 4. If the conduct of a person, which constitutes an offense under this Act, also constitutes an offense defined by the Penal Code of the State of Texas, as amended, the provisions of this Act shall not be applicable and the Penal Code shall govern.

Amended by Acts 1979, 66th Leg., p. 316, ch. 146, § 1, eff. May 11, 1979.

Art. 4477e. Spanish surname information on vital statistics records

Purpose

Section 1. The purpose of this Act is to enable this state to participate in a study being conducted by a group of states in the Southwest to obtain information about the birth rates and mortality patterns of persons with Spanish surnames and to implement recommendations made by the National Center for Health Statistics for improved methods of maintaining vital statistics.

Revision of vital statistic forms

Sec. 2. In the next official revision of the prescribed forms for birth certificates, fetal death certificates, and death certificates, the Texas Department of Health shall include the following inquiries and instructions:

(A) on a birth certificate or fetal death certificate:

"(1) Is father of Spanish origin?

"(2) If yes, specify Mexican, Cuban, Puerto Rican, etc.

"(3) Is mother of Spanish origin?

"(4) If yes, specify Mexican, Cuban, Puerto Rican, etc."

(B) on a death certificate:

"(1) Was the decedent of Spanish origin?

"(2) If yes, specify Mexican, Cuban, Puerto Rican, etc."

Acts 1979, 66th Leg., p. 1112, ch. 520, eff. Aug. 27, 1977.

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No. 83-54

In the Supreme Court of the United States

OCTOBER TERM, 1983

EMMA F. LOPEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that assisting in the procurement of a false state birth certificate does not constitute a violation of 18 U.S.C. 1425, which prohibits the "knowing[] * * * procure[ment] * * * or * * * attempt[] to procure * * * any certificate or evidence of * * * citizenship" for a person not entitled thereto.

1. Upon her plea of guilty in the United States District Court for the Southern District of Texas, petitioner was convicted of knowingly procuring, obtaining, or applying for citizenship or documentary evidence of citizenship for one not entitled to it, in violation of 18 U.S.C. 1425. She was fined $3000 and sentenced to four years' imprisonment, which sentence was suspended in favor of five years' probation. After petitioner violated the conditions of her probation, the district court modified the sentence to require service of a six-month term of imprisonment. Pet. App. A1,

A4. Petitioner then moved to set aside her conviction pursuant to 28 U.S.C. 2255. The district court denied the petition, and the court of appeals affirmed. Pet. App. A1-A17.

The facts of the case, which are undisputed, are set out in the court of appeals' opinion. Briefly, petitioner, a midwife in Laredo, Texas, assisted Leonarda Vigil in obtaining a Texas birth certificate for Vigil's Mexican-born son, in exchange for $200. Pet. App. A1-A2.

2. Petitioner contends (Pet. 4-9) that the courts below erred in holding that the fraudulent procurement of a state birth certificate constitutes a violation of federal law, specifically, 18 U.S.C. 1425. She acknowledges (Pet. 4), however, that this question is one "of first impression in any circuit." There accordingly is no conflict among the courts of appeals that warrants this Court's intervention. In any event, even putting to one side questions regarding the propriety of raising this issue in a collateral attack after having failed to appeal the conviction, petitioner's claim is wholly without merit.

At the outset, petitioner's argument is foreclosed by the unambiguous statutory language. Section 1425(b) expressly proscribes the "attempt[] to procure or obtain * * * citizenship, * * * or any certificate or evidence of * * * citizenship * * *." A state birth certificate is not merely a record of registration of birth in the issuing jurisdiction; it is also a "certificate or evidence of * * * citizenship" of the United States. See *United States* v. *Henry*, 604 F.2d 908, 916 (5th Cir. 1979) (construing 18 U.S.C. 911); *United States* v. *Rodriguez Serrate*, 534 F.2d 7, 11 (1st Cir. 1976) (construing 18 U.S.C. 1015(c)).[1] Petitioner's suggestion (Pet. 5-6)

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[1]Petitioner concedes (Pet. 8) that the use of a false state birth certificate may provide the basis for a conviction under 18 U.S.C. 911 for false representation of citizenship. It follows *a fortiori* that a state birth certificate may constitute "evidence of * * * citizenship."

that the procurement of a false birth certificate is not within the reach of 18 U.S.C. 1425 because such documents are not expressly mentioned therein is specious; had Congress intended to list every document covered by the statute, it would not have been necessary to add the phrase "*any* certificate or evidence of * * * citizenship" (emphasis added).

Petitioner further contends (Pet. 6-8) that the legislative history shows that Section 1425 was not meant to apply to falsified birth certificates. Because, as we have shown above, the plain language of the statute encompasses the knowing procurement of false proof of citizenship, including birth certificates, resort to the legislative history is largely unnecessary. In any event, the court of appeals undertook a thorough review of that history (Pet. App. A9-A15) and correctly rejected petitioner's claim.

As the court of appeals observed (Pet. App. A9), 18 U.S.C. 1425 derives from two major revisions of the immigration laws, the Naturalization Act of 1906, ch. 3592, 34 Stat. 596 *et seq.*, and the Nationality Act of 1940, ch. 876, 54 Stat. 1137 *et seq.* The court of appeals further noted (Pet. App. A11-A15) that, although the earlier legislation "dealt exclusively with naturalization," the statute was comprehensively amended and rewritten in 1940, at which time the language referring to citizenship — *i.e.*, nationality at birth — and "certificate of citizenship, or other documentary evidence of naturalization or citizenship" (§§ 201 and 346(a)(5), 54 Stat. 1138 and 1164) was specifically added. It strains credulity to suggest, as petitioner does, that the Congress that added this language did not intend it to apply to birth certificates. The legislative history thus provides no support for petitioner's position; even viewed most favorably to petitioner, it evinces no " 'clearly expressed legislative intent' " sufficient to override the plain language of the statute. See *United States* v. *Turkette*, 452 U.S. 576, 580 (1981) (citation omitted).

Finally, it is wholly irrelevant that the State of Texas "has provided penal sanctions for the furnishing of false information pertaining to birth records" (Pet. 9). The provisions on which petitioner relies (*ibid.*), which were enacted to enforce Texas's "Sanitary Code," obviously are not addressed to the federal concerns of citizenship and naturalization. As the court of appeals observed (Pet. App. A16):

> [A]lthough the registration of state birth certificates is traditionally regulated by state law, a violation of the immigration laws has long been considered a federal offense. Moreover, the mere fact that a state criminal statute covers certain activities does not preclude the [C]ongress from making the same activities a federal crime.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

OCTOBER 1983

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[2]Petitioner's heavy reliance (Pet. 4-6, 8) on *Williams* v. *United States*, No. 80-2116 (June 29, 1982), is wholly misplaced. As the court of appeals observed (Pet. App. A16), by contrast to the situation in *Williams*, there is no statutory ambiguity here. Indeed, the court of appeals' construction of the statute at issue in this case fully satisfies all of the criteria set forth in *Williams* (slip op. 11) and recited by petitioner (Pet. 5): the plain language of the statute encompasses petitioner's conduct; the legislative history evinces no contrary purpose; the proposed construction would not render a wide range of conduct violative of federal law; and the prohibition of falsified evidence of citizenship is not a matter traditionally regulated by state law.

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